LEGISLATIVE ASSEMBLY OF ONTARIO

# PROCEEDINGS OF SELECT COMMITTEE ON ADMINISTRATION OF JUSTICE

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L. B. JOLLIFFE, K.C.

Ontario. Legislature assembly. [Committees]
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Proceedings

ONTARIO

# PROCEEDINGS

of the

# SELECT COMMITTEE OF THE ONTARIO LEGISLATIVE ASSEMBLY

APPOINTED TO ENQUIRE INTO AND REPORT UPON CERTAIN MATTERS CONCERNING THE ADMINISTRATION OF JUSTICE IN THE PROVINCE OF ONTARIO.

Vol. 21.

Monday, August 27, 1951.



R. C. Sturgeon,
Official Reporter,
Room 121,
Parliament Bldgs.

TWENTY-FIRST DAY

Toronto, Ontario,
Monday, August 27th, 1951,
At 2.30 o'clock p.m.

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---The further proceedings of this Committee re-convened pursuant to adjournment.

---All parties present (excepting Mr. Villeneuve).

---Same appearances as heretofore noted.

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THE CHAIRMAN: Gentleman, we will please come to order.

CHARLES P. McTAGUE,

A witness previously heard and now recalled who, having been already sworn, continues his testimony as follows:

THE WITNESS: Mr. Chairman, as we stated we would, on Friday, I have here copies -- there are nine of them -- of the Extradition Treaty, which was not ratified, and was withdrawn in 1942.

EXHIBIT NO.133: Extradition Treaty unratified and withdrawn, 1942, as produced by the witness McTague.

THE WITNESS: Then you may recall that reference was made to a brief which was presented at that time setting forth the functions of the security dealers at that date, in respect of it. We tried to procure some additional copies, but unfortunately we have been unable to do so. Evidently it is out of print, and we just could not get it.

I may file the copy with the secretary, but it is the only copy we have.

EXHIBIT NO.134: Copy of Brief as produced by the witness McTague.

BY MR. JOLLIFFE:

Q It ought to be returned to you when we get through with it.

A I think it will be all right. We would not worry about that, Mr. Jolliffe.

THE CHAIRMAN: Have you any further questions, Mr. Jolliffe?

MR. JOLLIFFE: Yes, Mr. Chairman.

BY MR. JOLLIFFE:

Q I would like to ask you, in view of your great experience in these matters, whether you have any comment to make on the apparent divergence of the Ontario Legislation from that of the other provinces?

As I understand the history; the other provinces modelled their legislation on the old Ontario Act. Then Ontario seems to have turned it down, and wrote a new one, which diverges somewhat and the other provinces have not followed it. There may be some special reason for that. I wonder if you would care to comment on it.

A I shall try to give you the background, as I understand it, Mr. Jolliffe.

The 1937 Securities Act was an Act that did not -- how shall we say? -- Have any particular philosophy back of it, beyond this; that it did put into the hands of the Commissioner -- and there was only one; it was not a Board, as it was subsequently -- broad and almost bureaucratic powers with respect to who might be registered, and whether an issue would be qualified or not, and there was not anything back of it beyond putting the administration of the whole securities

business into the hands of one man.

If you would read from the report of the Royal Commission, which I think must be procurable -- that is, the Urquhart Commission -- you will notice that following the report of the Urquhart Commission, the 1945 Act was drafted and subsequently passed.

The basic philosophy back of the 1945 Act was quite similar to that behind the Securities and Exchange Act in the United States, namely, that full, plain and frank disclosure was made compulsory in respect of a prospectus, and the one-man Commissioner form was changed to a Board of Commissioners, under a Chairman.

I would say that, generally speaking, the 1945 Act tended to lay down the rules in fairly definite terms, upon which the people would act, and also in connection with which any administrative committee would be bound. I mean, the tendency in the 1945 Act was to take away the arbitrary power which existed in the 1937 Act, in the hands of one Commissioner, and it did make provision, I think very much along the lines of both the S.E.C. and of the English Companies' Act. In other words, people were

assumed to be twenty-one. For the purpose of the Act they were deemed to be sane, and, therefore, the proposal was that they should be given the opportunity to become acquainted with all that there was to know in connection with the securities business, before the purchase became good, and, as a matter of fact, there were powers of recision in case it might be shown there was not full disclosure, and, of course, later on -- in the 1947 Act -- there were sanctions, and so on.

I would say that the 1945 Act in Ontario moved more into line with what was considered good theory and philosophy in the United States Federal Act, and also as far as the English Act was concerned.

Now, it is quite a natural thing, Mr. Jolliffe, for somebody administering an Act of that kind, ruling the destinies of people engaged in securities distribution, to rather resent having certain rules laid down which just restrained him, as well as anybody else, from being arbitrary about it.

Under the 1937 Act, -- and I think in all the Acts in Canada; I mean, the provinces other than Ontario -- the Commission does not have to give any reasons for their action at all; in other words, if

they think a security is not good, that is "out", and that is the end of it.

Frankly, I do not like that kind of legislation, because I do not think any one man in any province is good enough for that. I certainly would be the first to admit I could not do it, and I would not want to do it, and would not want to tackle it, in that kind of legislation. They have retained it pretty well. There have been changes made by some amendments in the Quebec Act which perhaps, in some respects, goes further in a way, and perhaps puts a heavier onus on the security dealers in certain situations, that is, where it turns out that people are of a kind and type where they are easily imposed upon, and so forth.

Outside of that, the other Acts remain pretty much as a pattern of the 1937 Act.

The 1937 Act was discarded, and I can only try to analyze it from the point of view of what took place.

You will find I had some experience with this myself when I was on the Court in that connection and under the 1937 Act the Commissioner was, in reality, in my opinion, more or less usurping the powers of the

Court in that certain situations came up, and they were taking a view and laying down the law in a way that if you did not turn back so many shares into the Treasury, they would be prosecuted, and so on.

Then there was a tendency to say there was a violation of the Act, or of what the Commissioner thought was the right thing to do, or an offence under the Act, but if you made restitution, it was forgiven, and so on.

You will find sufficient hints of that, I think, in the Urquhart Commissions report which indicates the changed philosophy which was on the move at that time. Although I will be quite frank about this; the government of the day did not take the Urquhart Commission's report wholeheartedly and implement it at all.

BY MR. JOLLIFFE:

Q That report was primarily a report on mining in Ontario?

A That is right.

Q And not primarily on the securities industry.

A That is right, but it was the mining industry in relation to securities.

The 1945 Securities Act followed from it, but

it did not implement entirely a great many of the recommendations which the Commission made. It tended to -- not only "tended to", but did make provisions for the safeguarding of securities purchasers, and that, I think, if you read the Commission's report, you will find, did not go as far as the Act did in that regard.

Q With reference to the powers of a single Commissioner under the old Act; there was an amendment in 1941 which provided for a Board of Review, the judge of the Mining Court, the Master of the Supreme Court, and the Deputy Minister of Mines?

A That is right.

Q Had that been proclaimed when you were the Commissioner?

A Oh, yes, it had been in use, Mr. Jolliffe. There had been reviews under the 1937 Act. There were not in my time, because I was only the Commissioner under that Act, as a formality, for about two weeks until the other Act was proclaimed, so no actual reviews took place during my time, but there were reviews before that.

Q And there was provision for an appeal to the Appellate Court?

A I do not remember that. The reviews made under the 1945 Act, and the reviews which take place now, are almost entirely confined to the taking away of some registration, or something like that.

Q I think Mr. Lennox told us that all the hearings of the full Commission in his time, except one, related to disciplinary action?

A That is right.

Q The only exception was one involving a decision about the releases?

A That is right. As I remember it, there was one involving a dispute about a release.

Q What is the significance of that? You were going on to say something about that?

A I was going to say that I do not think that the Board of Review which dealt purely with that type of disciplinary case -- and that is true under the 1937 Act -- went very far toward considering arbitrary powers of the kind I have in mind.

Q But there was a provision for an appeal to the Court of Appeal? The 1941 amendment did that?

A I do not remember that. There is provision, of course, in both the 1945 Act and the 1947 Act, for an appeal to a judge of the Appellate Division. I

have no recollection of there ever being an appeal in my time. I was on the Court of Appeal at that time -- although I was in Ottawa most of the time -- but I do not remember a case coming before the Court of Appeal in that time. There may have been, but I do not know of it.

Q No, I have no recollection of it. On the same point, Mr. McTague; I am interested in the nature of the present appeal. I am speaking as one who is not an admirer of what Lord Hewart called "the new despotism", but, all personalities aside, it seems to me that the provision for an appeal which permits an appeal from a tribunal of a chairman, to a Board presided over by the Chairman, on a decision which is being appealed, is rather an odd procedure, and rather against our judicial procedure.

A Yes. When I came into that position and examined that particular section of the Act about the powers, and so on, and the decision of the Chairman being subject to review, and really subject to veto by two other people, I did not like it very much, But, still, at the same time, while I had that fear of it, in actual practice it worked very well. You are talking now about the review of the Chairman's

decision by the full Commission?

Q Yes.

A I think it is like what you get in regard to the appeal procedure in the courts down in the Maritimes, for instance --

Q In Nova Scotia?

A Where you occasionally have the judge who has tried the case, sitting in appeal.

Q But they sit as equals?

A Yes.

Q They sometimes have five Nova Scotia judges sitting on a footing of equality in an appeal.

A And one might have been the trial judge. I was not speaking alone of Nova Scotia, but in New Brunswick and Prince Edward Island. It is always difficult in Prince Edward Island, because there are only three, I believe.

Q I believe the same is true in Newfoundland, but that is a little different than this case, where we have, in effect, an appeal to a tribunal presided over by a gentleman whose decision is being appealed, and associated with him, as he presides over the appeal, are two junior members of the tribunal.

I can see two points involved. One is the

very practical point that it might be embarrassing to him, and also embarrassing to the junior members of the Appellate Tribunal.

But perhaps that is less important than the principle of the thing. It seems to me to be wrong in principle.

I would say that I did not like the provision in principle, but during my time, in actual practice, there was only one decision out of -- I believe there might have been 200. It was not unanimous, as far as that is concerned.

BY THE CHAIRMAN:

Q Of course, the other two members of the Commission are public officials, quite independent of the Commission; one is the master of the Supreme Court, a very high court official, and the other is the Deputy Minister of Mines?

A Yes. Of course, the Deputy Minister of Mines brings a terrific strength to the problems which come before the full Commission, at least he did, for a person like me as Chairman, because he naturally knows so much about the mining activities, and whether

a property has got a chance. He has a very good knowledge of those things, in which I would be entirely lacking, and so would the Master in Chambers, I suspect, although, when Mr. Lennox was there with me, I found his contributions very constructive, particularly from the point of view that he had had so many of these hearings as Master, where there had been brokerage failures, and so on, in the days before I got there.

A background of that kind, gave me a good deal of strength, and particular value for an operation of that kind.

BY MR. JOLLIFFE:

Q What would you think of designating a judge as Chairman of the review or appellate body?

A In theory it might be all right. A judge would naturally have the background and experience in presiding over hearings of that kind.

On the other hand, I might also be somewhat inclined to go along the line some of my friends in the labour field, when a judge is supposed to preside over things there as a steady job. I do not know. I suppose it would depend on the judge to a large

extent. I would not see any objection to it in principle, as far as I am concerned. It would have this merit, that it would be a real review, and then it might also involve the changing, Mr. Jolliffe, to some extent, of the appeals, from the review.

BY THE CHAIRMAN:

Q It is not in the real sense, an appeal?

A No, it is a review.

Q I suppose the Chairman of the Securities Commission has considerable knowledge of the background of the matter, which may not be within the limits of any formal evidence?

A That is right. You have to have that in mind when you are dealing with an administrative tribunal.

I read a judgment on this at one time, Mr. Jolliffe. I have forgotten the name of it, but it had to do with the Police Commission in Toronto.

THE CHAIRMAN: Mr. Jolliffe probably knows of it.

THE WITNESS: But the operation before an administrative tribunal is entirely different than

one before a court.

Reviewing a Police Commission, for instance, who is dealing with whether somebody is going to get a license for a slaughter-house, or whether he is not, they have so many opportunities, and they find out so much and they know so much about the neighbourhood, and all that sort of thing, that I do not think you can conduct these reviews exactly on the basis that you would conduct a piece of litigation. They do not have a record, for instance. They do not have a transcript. Of course, we had in the Securities Commission, in the review, but it is a little bit different.

You are undoubtedly familiar with some of the decisions of Chief Justice Robertson, on some of these appeals. He has taken them all, as far as I know. He did during my time, and I think he has continued to take any appeals which come along.

The general attitude of the court, as expressed in his judgment, is that you have in this Act a section which provides and makes it obligatory upon a Commission to take away some registration, when it is deemed to be in the public interest, so to do. That is a very wide proposition.

BY MR. JOLLIFFE:

Q About as wide as it can be.

A I do not know of anything wider. I think it is about Section 12. I am not certain of that. It is around there somewhere.

The court is not going to substitute its judgment for that of an administrative tribunal in arriving at a conclusion on that proposition. Naturally, if you were able to show that the Board did not act in a judicial way, that it did not act fairly, that it acted arbitrarily, or that it did as -- well, let us say, did not act in the line of natural justice or essential justice, the court would undoubtedly interfere, but otherwise, if I read the judgments correctly, I do not think it would do it. That certainly has been laid down more than once in several of the appeals.

BY THE CHAIRMAN:

Q Of course, the appeal provided for in Section 30 is an appeal from the Commission's ruling?

A Yes.

Q To a justice in appeal of the Supreme Court?

A Yes.

MR. JOLLIFFE: What Section is that?

THE CHAIRMAN: Section 30 of the Act.

THE WITNESS: That is from the full Commission.

BY THE CHAIRMAN:

Q So the Commission really is not the final word.

A That is right, but under the law, it comes very close to it.

BY MR. JOLLIFFE:

Q What I am coming to is this. I agree that the Commission's powers are very great. Section 8, is the present number.

A That is in regard to "public interest"?

Q Yes, it says:

"The Commission shall suspend or cancel any registration where in its opinion such action is in the public interest."

On the face of it, you would think it is practically impossible to succeed on appeal in view of the wording of that section, but does it not arise that on occasion the court might find on the basis of the reasons given, that the tribunal below had proceeded on the wrong principle -- on the wrong footing?

A Oh, that is conceivable. Put it this way, about the practical basis, that there have been quite a number of appeals, and on no occasion that I know of has the decision of the Commission been disturbed. It has never been upset, largely on the proposition that the court does not deem it to be its business to substitute its judgment for that of an administrative tribunal, which decides it is in the public interest.

There could be reasons, of course, but naturally you realize it is almost a stereotyped phrase in the recent cases, that it is "deemed to be in the public interest". It is statutory.

Q It would not surprise me if very few appeals succeeded in view of Section 8.

A None has.

Q But, at the same time, it is interesting to notice that in Section 30, we find the following:

> "(3) The registrar shall certify to the Registrar of the Supreme Court of Ontario,
>
> (a) the direction, decision, order or ruling which has been reviewed by the Commission;
>
> (b) the order of the Commission upon the review, together with any statement of reasons therefor;
>
> (c) the record of the review; and
>
> (d) all written submissions to the Commission or other material which in the opinion of the registrar are relevant to the appeal."

A That is right.

Q One of the difficulties with this administrative tribunal is that sometimes their reasons are not reasons at all; they are practically incomprehensible, or are superficial or inadequate, so you cannot tell what the bases for them are.

I cannot say that is true with Mr. Lennox. Some of his reasons have been quite full, but it has been characteristic of some of the other administrative bodies. But, from the point of view of a citizen whose

reputation may be at stake, it is a serious matter.

THE CHAIRMAN: Of course, where the appeal is the last resort, the tendency would be to have better reasons than if there was no right to appeal.

MR. JOLLIFFE: That is right.

THE CHAIRMAN: It may have that effect. It is a salutary thing to have a final appeal to somebody outside -- some independent official. Even though the appeals have never succeeded, that does not mean the provision for the appeal serves no useful purpose.

A Oh, I think it serves a very useful purpose. I think it serves as a deterrent, as far as the Commission is concerned, from acting arbitrarily, or anything of that kind. No doubt about that.

I feel this way about it, Mr. Jolliffe; from my experience, I do know that when appeals get to a court where there is a judge of the appellate division, or any Supreme Court Judge, and gets to the Court of Appeals, if the matter is in appeal, there is always castigation of the people below who have not produced reasons.

Therefore, in my estimation, and I think also

in that of Mr. Lennox, reasons are produced for every decision, because of the fact that that provision is in there, under Section 30.

BY MR. JOLLIFFE:

Q That is wholly desirable, do you not think?

A Oh, yes, definitely I do.

THE CHAIRMAN: And the reasons in most cases are published?

MR. JOLLIFFE: Yes, they are now.

BY MR. HOUCK:

Q Suppose, Mr. McTague, I happen to be a broker-dealer, and have done something contrary to the Securities Act, and am duly called before the Commission and they cancel my license; who suffers the most? Do I or the shares of the company? Is that stock made an orphan?

A That is one of the things you have to consider when the matter is put before you, Mr. Houck.

I think that sometimes on balance you might find a technical violation of some particular provision of the Act, but nevertheless, the man who is before

you has been a man who has been constructive in his operations; he is putting money into the Treasury; he is giving the shareholders a "deal" and so on. I know that latter consideration, as far as I am concerned, has out-done the other one on occasion. I do not think anybody could give you a precise formula. Every case is a case in itself.

Naturally, there is always a tendency -- well, I do not know about "tendency" -- but there is always a danger that too hasty action on the part of the Commission in certain situations may possibly result in harm to the shareholders, as far as their investments are concerned. And these are matters which involve a question of judgment alone, in respect of how they are handled.

BY MR. JOLLIFFE:

Q Of course, the Commission has to think not only of those who have become shareholders, but those who may become shareholders in the future?

A That is right.

Q If that issue continues to be marketable?

A That is right.

Q I do not know whether you were here when

I think Mr. Lennox indicated he had changed some of his views about that, as a result of his experience, and now thinks it necessary to act, even though the result on the company and its existing shareholders may be deplorable?

A I do not know. I was not here.

Q I would find it difficult to accept the general proposition, because there has come to your attention something that requires investigation, and there are things to be done in the first instance, in such a way as to perhaps jeopardize their interests?

A I do not know whether I am at odds with him on that. I do not think so.

BY THE CHAIRMAN:

Q No. But where the violation is of sufficiently grave nature to make it in the public interest to prevent a certain man from continuing to sell securities?

A Oh, yes. I thought you more or less had reference to this investigation which took place with a lot of furore about it, and so on. You have to tackle head-on the matter of registration, whether it is in the public interests or not.

BY MR. JANES:

Q Mr. McTague, do you think you are getting down to the root of the whole thing, that we must be more careful when these men get licenses to operate? If they were weeded out before they started to operate, it would be better.

I am convinced there is not enough care used. I will go further and say that the B.D.A., as an organization, should clean it up, and I am not convinced they are taking their share of the responsibility.

A One reason why Mr. Wismer is here is to try and convince you that they are really trying to do a job in that regard.

Q But do you not think -- does it follow that we should say, expost facto, that something has gone wrong, and, therefore, that fellow should not have been in business? You cannot always anticipate these things. I think during my time I was given credit for a wholesale clean-up. The Act contemplated it, and it was carried on on that basis, as far as that is concerned.

As a matter of fact, I was attacked on the front page of one of the weeklies -- one of the

mining papers, editorially, every week for eight weeks, just because of that tendency or propensity, but after all, it is a human operation, and you cannot tell.

I think naturally if you catch somebody doing an undesirable act, you have to take his registration away from him. I think that has been done pretty consistently since 1945. There have been a lot of people admitted to the business who perhaps should not have been there. I do not know.

BY MR. HOUCK:

Q Do you think from your past experience as solicitor for the Broker-Dealers, that the Act should have more teeth put into it?

A I do not know, Mr. Houck, where you can get more teeth, particularly. The Act is built up on the basis of experience. I do not know that any new experiences are being undergone, which would suggest more teeth at the present time.

As I told Mr. Jolliffe on Friday, I flirted with the idea and put in a great deal of hard work in trying to find something I could recommend being put into the Act, with respect to this business of

people behind "fronts" and so on. Frankly, I did not know how to do that. It is when you get to the definition that you get into trouble all the time.

Then, about the other thing; there may be somebody who is more competent than I to do something in that way.

That is about all I can think of. It does not matter what you put in about the telephone business; it is a question of fact, as to whether a person calls, and what he says over the telephone. I do not think it makes any difference about amending the Act.

Q Then I take it, Mr. McTague, as the Act stands, you consider it a good Act?

A Yes, I do. I drew it. I was the father of the Act.

Q I wanted to give you the opportunity of patting yourself on the back.

A Thank you.

BY MR. JOLLIFFE:

Q In connection with Mr. Janes' remark, I think that we were all struck by one of Mr. Lennox' statements when he was referring to the two front

men recently detected, and suspended or cancelled. He pointed out these two men were caught during their first and last issue. I think we were all struck by the fact that on the very first issue they were caught -- caught "right off the bat". Perhaps the Commission can take some credit for having investigated and making that discovery before it went any further. But it is also apparent that in obtaining registration these men successfully deceived the Commission?

A That is right.

BY MR. JANES:

Q Does a man undergo any test, or does a man come in "out of the blue" and start selling?

A No. He has an application to fill out, and there is a provision for examining him. A good many of them have been turned down. Perhaps the broker-dealers' requirements are only complementary to the Commission's. They do not supersede the Commission, and the Commission does not rely on the broker-dealers, but the broker-dealers' requirements in the application are pretty stiff.

In the case of salesmen who are coming in now -- and you will have this (indicating) before you

-- they are required to undergo an examination; they are required to undergo an apprenticeship, and so on, and I say this just as an instance. I heard something to the effect of a man -- out of nine applications to our Broker-Dealers' Association, seven were turned down.

MR. WISMER: Seven out of nine applications for broker-dealers.

MR. JOLLIFFE: In what period of time?

MR. WISMER: Since about the first of February.

MR. JANES: Are all the broker-dealers members of the Broker-Dealers' Association?

THE WITNESS: They are now. I think there was one, as Mr. Lennox indicated, which went through in error.

Q It was suggested that after they were licensed and were operating, it was found out they had jumped bail in a case, to get away from a court case, and the law was after them there, but they were up here selling securities. I think I am right in that.

A I do not know. I know definitely of one case, and that was a case of fifty thousand dollars. That

is why I remember it so well. The man's name was DePalma. The man was not registered here at the time he jumped bail, and had no chance of being registered at all.

BY MR. GRUMMETT:

Q Was he ever registered?

A Oh, yes, he was registered here.

BY MR. JOLLIFFE:

Q Back in 1946?

A During my time, his registration was taken away from him.

BY THE CHAIRMAN:

Q He had been registered before?

A Yes.

BY MR. JOLLIFFE:

Q Was that on the general review, or a specific case?

A On the general review.

BY MR. GRUBLETT:

Q After he jumped bail, was he not registered again?

A He was not registered at the time he jumped bail.

Q He never secured registration after he jumped bail -- in the United States?

A No, I don't think so. He has not had his registration since it was taken away from him, about 1946.

BY MR. JOLLIFFE:

Q Yet he is very active in the business?

A Of course.

BY MR. DONNER:

Q Still active?

A Yes. That is a promoter's proposition. You have promoters all over the place of one kind and another. After all, it is not a disgrace to be a promoter. Cecil Rhodes was a promoter, and there are other big people.

BY MR. DOWNER:

Q Do you not think it would be a good thing to have the promoters registered or licensed?

A I do, but, Mr. Downer, I do not know just how to describe a "promoter" in such a way that you are going to get the ones you really want registered. It is a very difficult proposition.

BY MR. JOLLIFFE:

Q But there is a difference. There are promoters and promoters, Mr. McTague.

A That is right, and certainly that is the trouble.

MR. DOWNER: That is what he said a minute ago.

BY MR. JOLLIFFE:

Q Rhodes was a promoter, but I do not recall him ever having jumped bail.

What occurred to us was that most of these promoters seem to be men who cannot obtain registration with the Commission. They were at one time registered, but are not now, and they have not a "snowball's chance" of being registered.

MR. DOWNER: There is nothing to do about it by taking action?

THE CHAIRMAN: Unless they had some front, as has been described as indirectly selling to the public, in that way. If they deal through an independent registered broker, what harm can it do?

THE WITNESS: Well, I do not know. There have been cases during my time, we had the Criminal Code amended to cover certain activities such as the business of washed sales, and washed sales which were carried on through promoters who were employing four or five different firms to buy and sell, and buy and sell, and create the idea of a tremendously active market, and that things were going swimmingly.

BY MR. JOLLIFFE:

Q Do you recall when that was -- when the amendment was made?

A Yes. It was either the spring of 1947 or 1948. Mr. Duggan can get that. It should be on record with the Commission.

THE CHAIRMAN: The Code is here (indicating). What is the section?

MR. DUGGAN: Section 444 (a).

THE WITNESS: I think it was after the Eldona investigation.

BY MR. JOLLIFFE:

Q You are speaking of washed sales?

A Yes.

THE CHAIRMAN: There is no indication of the date of that.

MR. JOLLIFFE: It would be in Tremears' supplement. What is the Section?

THE CHAIRMAN: 444(a).

THE WITNESS: Some of your memories may be better than mine.

MR. JOLLIFFE: It was in 1948.

THE WITNESS: I conferred with the Hon. Mr. Ilsley, when he was Minister of Justice, just shortly before his retirement, so it was about 1948.

BY MR. JOLLIFFE:

Q Do you happen to know if there have been

any successful prosecutions under that section?

A I do not think there have, Mr. Jolliffe. I would think there probably has not been occasion for it, as far as that goes.

THE CHAIRMAN: I think Mr. Lennox stated there had been some investigation by the Securities Commission --

THE WITNESS: There was no prosecution.

THE CHAIRMAN: No, no prosecution, because they found on the investigation, that there was no evidence. They had a wide investigation, and sent in auditors to follow up these transactions.

BY MR. JOLLIFFE:

Q I intended to clear this up while Mr. Lennox was on the stand, but he made a reference to the heavy speculators trading in Callinan, and I think what he said was in a different sense than that heard by the reporter. It appears in the transcript in the opposite manner. He did not discuss the findings of the Commission, but he did support his prosecution under 444 (a).

THE CHAIRMAN: That was my impression.

MR. JOLLIFFE: Apparently the reporter did not hear him correctly, because the opposite is given in the transcript.

There was another amendment to the Code, which I think you mentioned?

A Yes, there was. I had forgotten at the moment. I think there were two.

Q Did not the second one follow the Bolivia case?

A No, the Bolivia case was much earlier. The Bolivia situation did not disclose anything of that type of operation at all. As a matter of fact, it disclosed mainly that there was a promoter who was letting people -- particularly one man in New York -- obtain his, the promoter's, stock very cheaply, with the idea that the promoter in New York was going to create, or make a market, as they say on the street, and that particular promoter sold it back to him as fast as it went up to him. He got it all back. It was a gigantic double-cross.

Q He continued selling the stock himself?

A Yes, at a continually higher price.

Q Well, Mr. McTague, unless there are further

questions on that point, on the Act itself, I am interested in this matter of disclosure, and whether the offerors act as principals or agents, I remember Mr. Blackwell, in introducing the 1945 Act, placed very great stress on the matter. It is not indexed, but are you familiar, off-hand, with the references to that point in the Act?

A No, but I can get it. It is there all right.

THE CHAIRMAN: Section 51.

THE WITNESS: Section 50 -- no, 50 has to do with the Stock Exchange.

BY THE CHAIRMAN:

Q Is it not Section 51?

A That is right.

Q 51 (c).

A Yes.

"Every person or company registered for trading in securities under this Act who has acted either as principal or agent in connection with any trade in a security other than a trade upon a stock exchange shall promptly send to each customer a written confirmation

of the transaction setting forth,

(a) the quantity and description of the security,

(b) the consideration;

(c) whether or not the person or company registered for trading in securities under this Act is acting as principal or agent;"

And then, in Section 54; I think this deals not only with the confirmation, but also the circulars, and so on. Section 54 reads:

"Where a person or company registered for trading in securities under this Act, with the intention of effecting a trade in a security with any person other than a person registered for trading in securities under this Act, issues, publishes or sends a circular, pamphlet, letter, telegram or advertisement, and proposes to act in such trade as a principal, such person or company shall so state in the circular, pamphlet, letter, telegram or advertisement or otherwise in writing before entering into a contract

for the sale or purchase of any such security and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract."

THE CHAIRMAN: That is really a refinement of the well-known common-law principle that a broker is generally presumed to be an agent if he acts as a principal, and it is his duty to disclose that to his client.

MR. JOLLIFFE: The difficulty was, as Mr. Blackwell pointed out in 1945, that the principle was a very sound one, and known probably to business men, but did not seem to be well-known to people engaged in the securities business.

THE CHAIRMAN: I found that out also, at one time.

THE WITNESS: You pick up an advertisement to-day, and you will see right along, whether it is an investment dealer selling municipals, or whether it is an unlisted dealer selling mining stocks, the words "We act as principals".

That is a compliance, I think, with Section 54.

MR. JOLLIFFE: I would like to follow this up. I realize that Section 54 is now known to people in the business, certainly known to the B.D.A., but I notice some strange methods of compliance with Section 54.

For example, a very common, two-word phrase is, "as principals".

THE WITNESS: "We offer as principals"?

BY MR. JOLLIFFE:

Q No, that is one of the refinements. I am referring to just the words "As principals".

A For example, "As principal, we urge you to start the purchase of such-and-such a stock".

Q The two words "as principal", may strictly comply with the requirements of Section 54. I do not know. It is arguable, but I doubt if it goes as far as what you might call a "full, true, and plain disclosure". That word "plain" has some significance, too.

A Of course, you are not talking about the contents of the prospectus there. You are talking about the requirement that if certain things are not done -- it has nothing to do with the description of securities; it has to do with the position of the offering --

Q That is right.

A And it results, and has resulted, in a good many prosecutions in my time, and I imagine in Mr. Lennox' time, most of them successful, because it is an easy enough thing to prove.

Q You mean the failure to disclose?

A Oh, yes.

Q You have anticipated the very point in which I am interested, and that is the principle of "full, true and plain disclosure", which applies to the prospectuses in relation to the securities offered, and also applies, does it not, to the status of the offeror.

A Yes, and that is required under Section 54, and also under Section 51, where the confirmations come in.

Then, of course, there is the recision if taken within a certain time, with respect to non-compliance.

Q What I notice about much of this literature is that it complies technically perhaps with the requirements of Section 54, but not with the requirements of "plain disclosure".

Now, where the only words used are "as principals", that may be arguable. But you have these cases where, in rather small type at the foot of the page, it is stated that:

> "Any security mentioned above in which the writer is interested financially, is indicated thus"

--with an asterisk, or something of that sort, or perhaps with three asterisks.

Again there, that may be technical compliance, but it is not very noticeable, and not very plain, particularly if the letters are printed in very small type at the foot of a page.

What is your view on that problem? Do you think there is any need for tightening up on that,

Mr. McTague?

A No, I do not think so.

After all, if you ascertain that the section is not being complied with, you bring a prosecution. Then it is a matter for the court to decide whether that is sufficient to be "plain disclosure."

Of course, that balance would not be used in connection with Section 54, because Section 54 is just statutory, and says that certain things are required.

I do not remember of any difficulty; nor I do not know of any injustice, that I can recollect ever happening in that regard, where people were prosecuted and were fined, and sometimes their registrations were taken away, according to the evidence that came out -- and that was it. It was just the job of the Commission.

THE CHAIRMAN: Shall we adjourn for five minutes?

MR. JOLLIFFE: Yes, I think so.

---Whereupon a short recess was had.

---Upon resuming.

THE CHAIRMAN: Mr. McTague, will you continue?

BY MR. JANES:

Q. You mentioned the B.D.A. cancelled or turned down seven out of nine applications. Were all those new applications or were some of them repeaters?

A I think they were new. In addition they cancelled a number and fined a great many. Mr. Wismer is here to give you all the facts in connection with that.

MR. JOLLIFFE: Have you any further questions, Mr. Janes?

MR. JANES: I do not think I have anything further on that.

THE WITNESS: I think it was clarified by Mr. Lennox.

BY MR. JOLLIFFE:

Q. Mr. McTague, further to the disclosure of the offeror acting as principal; Mr. Lennox told us that the increasing tendency is to have the literature sent out by broker-dealers take the form of periodicals in formational bulletins, and the like, which go out from time to time, weekly or monthly,

rather than going all at once in a great splurge, through the mail.

A I think the policy is to have them all comply with Section 54.

Q You mean the policy of the B.D.A.?

A Yes. If it is a solicitation or not, everything that goes out must comply.

Q What I am coming to is this; In looking at some of files which Mr. Lennox brought down, the material in those files practically confirmed what Mr. Lennox told us.

That type of material, whatever might be said in favour of it, gives the appearance of being in the nature of news or commentary rather than an out-right offer of shares. In fact, one would get the impression that you are being circularized by an investment counsel rather than a broker. I am not saying that is exactly what he said, but that is the impression some of us got.

I notice in some of them, in compliance with Section 54, come out and say, at the foot of the page, firstly, that it is a speculative issue, and, secondly, they have these shares, and they are available, and "We act as principals", and there is no doubt about what that means, but it does seem to me that where the

material looks more like the material of an investment counsellor than that of a broker dealer, that the present policy is not sufficiently effective, and I am very interested to see, Mr. McTague, that the requirements of Section 56 of the Act are much tougher than the requirements of Section 54, because Section 56 is the one which relates to investment counsellors, and it reads:

> "Every registered investment counsel shall cause to be printed in a conspicuous position on every circular, pamphlet, advertisement, letter, telegram and other publication issued, published or sent by him, in type not less legible than that used in the body of the circular, pamphlet, advertisement, letter or other publication, a full and complete statement of any financial or other interest which he may have either directly or indirectly in any securities referred to therein or in the sale or purchase thereof including,
>
> (a) any ownership, beneficial or otherwise, which he may have in such securities or in any securities issued by the same company;

(b) any option which he may have in respect of such securities, and the terms thereof;

(c) any commission or other remuneration which he has received or may expect to receive from any person or company registered for trading in securities under this Act or otherwise in connection with any trade in such securities;

(d) any financial arrangement which he may have with any person or company registered for trading in securities under this Act relating to such securities; and

(e) any financial arrangement which he may have with any underwriter or other person who has any interest in the securities."

Now, the investment counsellor, in other words, if he has an interest has to give all his information in a conspicuous place, in type not less legible than the other type, and by the time he gets through with it, there would not be much room left for anything else on the page.

THE CHAIRMAN: He would cease to be an investment counsellor.

THE WITNESS: That Section 56 was built up on a very definite knowledge where people were purporting to be investment counsellors, but were really offering securities for sale.

Q They really were hawking their wares?

A Yes.

Q I am not saying it is wrong, but I say it is pretty tough, and much tougher than Section 54, and when I look at a circular purporting to be informational, in which the "full disclosure" is in very small type at the foot of a page, or sometimes the "full disclosure" is by an asterisk, then there would seem to be a wide gap between Sections 54 and 56. That might be tightened up.

A I do not say that Section 54 is perfect at all. I know that the intention of it was that anybody who was offering securities had to state in any document that he prepared, in writing -- whether it was a telegram or an advertisement or a letter or whatever it was -- whether he was acting as a principal or agent. There are many of these things which are practical in theory and the proposition is that anybody who is offered securities, must have the opportunity of knowing all about them, from the prospectus.

I would say that my experience is that of all

the prospectuses which go out from here, not ten percent. of the people read them, and I think that ten percent. is a very high estimate.

Q I think that would be high.

A That is consistent with the S.E.C. experience with it, too, according to what they have told me. I suppose a government body could not do very much more than give them the opportunity, but they do not take advantage of it. You have this sort of thing happening all the time. There is a strike with a diamond drill in some locality and immediately the shares start to move, and the people who have knowledge of it are demanding them. Or it may be in a property that is close to something else.

BY MR. JANES:

Q. Is that not true of everything? People do not read the fine print. How many people read the shipping bill of a railroad?

THE CHAIRMAN: It is there, if they want to read it. How many people read their insurance policies?

MR. JOLLIFFE: Not very many.

THE CHAIRMAN: It is stated in bold, black type, "Read your policy". Do you read yours? Very

few people read it, but it is right there.

BY MR. JANES:

Q. I remember one occasion where a man was shipping some cattle in and there was a train wreck and ten of his cattle were killed and five got loose, and ran off in the bush, and they wanted to get paid, but they found out that by virtue of the fine print, they could only collect so much.

THE WITNESS: They do not read the fine print.

BY MR. JOLLIFFE:

Q. I raised this point, because I noticed that in some cases -- at this moment, I will not mention any names -- we now have more broker-dealers putting out letters, if you like, in which very frequently all the statements were, from my knowledge, quite true and quite justified, not even exaggerated, and yet the fact that that particular broker-dealer is a principal is not adequately disclosed, the literature is made to appear as though it was from an investment counsellor, some "dopester" somebody who makes a hobby or profession of analyzing the market, rather than somebody who is trying to sell something.

A That may be. You mentioned one thing where the Broker-Dealers' Association has done some plugging.

When you see a circular it may say, "This is a speculative issue", or a "Speculative security" and that is a requirement of the Broker-Dealers Association, under the Act.

Q That is what I gathered, but at the same time, Mr. McTague, I also noticed in the recent circulars, the B.D.A. has apparently found it necessary to protect itself by putting in one of these saving clauses -- only in the case of recent circulars.

In the older circulars, the copy is simply marked with the date, and the initials of the officer who edited it.

A Yes, that is right.

Q But more recently, other words appear.

A The same thing has happened when the government used to do it. It is not fair to look to the Broker-Dealers' Association, because they peruse all literature, and require the man who is putting it out, to comply with certain conditions.

Q I quite agree with you. So that the Committee will know what this is all about, in the circular this stamp together with the initial of the perusing officer, and the text of the proposed circular, says:

> "This perusal is made in the public interest, and in the interest of the Association, but

does not mean that the Board of Governors approves or assumes any liability for this material, or the legality or accuracy of any statement contained herein."

MR. GRUMMETT: They had a new stamp prepared.

THE WITNESS: Yes, they did.

BY MR. JOLLIFFE:

Q. I am not criticizing it, but did that arise out of practical experience or was it an academic decision?

A I really do not know. Probably Mr. Wismer can answer that question.

MR. WISMER: You will recall that in a recent case, before Mr. Robertson, Counsel for the Defence, that the literature had been approved by the Broker-Dealers Association. We did not approve. We only perused it. Consequently, we decided to use that stamp.

THE CHAIRMAN: I think the stamp might be a very effective thing to have on the literature, because it is a warning that there is some obligation on the public, to beware. I think that might be more effective than a lot of other things which might be put on the literature.

MR. JOLLIFFE: But the public does not see that.

THE WITNESS: Usually the public is not entitled to expect that because there is an Association, because there is a Board of Governors who spend an awful lot of time free gratis in trying to help, that they should not be in a position where they are likely to be liable.

Q I entirely agree with you. I would gather that your stamp is simply a warning to the members of the B.D.A. that it is not endorsed by the B.D.A.

A You will find somewhat similiar phrasing in every prospectus which goes out from the S.E.C., that the S.E.C. is not approving the securities nor making any representation in connection with them.

Q On that very same point, I must say I think in fairness to your Association and the Commission and everybody else, that people in this business should refrain from trying to get somebody else to be their sponsor or backer.

There was one piece of literature -- and again I am not going to mention the name -- that suggests this sort of thing is not in the interest of your Association nor its members. One broker-dealer put out a message which was headed "Personal message to

our American clients". This was filed with your Association. He said something which I consider highly questionable;

> "It is virtually impossible for me to comply with these restrictive requirements, but, because or for the very reason that I do not comply, renders me and my several companies to be categorized as operating fraudulently. This, mind you, in spite of the fact that I fulfil all of the requirements of your own Ontario Securities Commission and the Ontario Companies Act, in respect to my financing operations."

And he has underlined"all the requirements of your own Ontario Securities Commission", and "Ontario Companies Act".

My first comment is I do not think he should hitch himself up to the Ontario Securities Commission in that way.

On the next page, he says:

> "I would appreciate your comments regarding this very serious situation, and if there is any doubt remaining in your mind, I would be glad if you would refer to our bankers, the Imperial Bank of Canada,

Head Office, Toronto, or to the Broker-Dealers' Association of Ontario, 302 Bay St., Toronto, as to our integrity and reliability".

I might interject that I do not see how your Association can certify to the integrity or behavior of a member.

A I would say they cannot. I do not know anything about that particular circular.

Q I am not concerned with the man himself, but with the principle of the thing. It seems to be awfully bad practice.

Then there is mention of another one, and also refers to the fact that the officers of his company were active members of the Toronto Board of Trade. What has that to do with the right to sell securities in the United States? It is just a lot of blarney.

It is part of a pattern under which the Broker-Dealers' Association, one of the banks, the Ontario Securities Commission and the Board of Trade, are all roped in to make him look responsible. If he is a responsible business man, he does not have to say that sort of thing.

MR. GRUMMETT: His responsibility speaks for itself.

THE WITNESS: That is true, but I have seen other people's circulars, for instance, from the Better Business Bureau. I have received them myself.

THE CHAIRMAN: Some people even pose as being friends of some politician.

MR. JOLLIFFE: And some people have put "K.C." after their names, which sometimes gives rise to misunderstanding in the United States.

THE WITNESS: Yes. Every time I go through the immigration, they ask me if I am a Knight of Colombus, if that is what you mean.

MR. JOLLIFFE: That is what a lot of them think of me.

THE WITNESS: Of course, I do not deny it.

MR. JOLLIFFE: Well, perhaps the question should be more properly directed to Mr. Wismer but in the case I mentioned, in which so many references were made to your Association and others, that particular letter was passed by the B.D.A., which I personally cannot understand.

A I do not know. Maybe Mr. Wismer knows something about it; maybe he does not.

BY MR. HOUCK:

Q. Who would pass on that? The Board of Governors or the Committee?

A Oh no, they have a perusing officer there. I think that is generally done by Mr. Gemmill, and when he is on vacation, Mr. Wismer does it. They are both lawyers with experience in the workings of the departments of government, and so on. Whether that helps to qualify anybody or not, I do not know.

BY MR. JOLLIFFE:

Q. Mr. McTague, at the outset of your evidence, you expressed your agreement with the general philosophy that as far as possible, a greater degree of self-government and self-discipline should be developed in the securities business, as it has already been to a certain extent in other branches of the securities business, other than the broker-dealers branch.

A Oh yes, but not without considerable trouble and difficulty. It was not altogether smooth. There were plenty of rows. I imagine some people around here will remember the Standard Stock Exchange and the Toronto Stock Exchange and certain phases of their careers. It was not all beer and skittles at all. It was a difficult situation.

There have been difficulties too in connection with the National Investment Bankers Association, where there have been resignations, and all that sort of thing, and differences on policy, and retirements. But they have been going a long time.

I image there were probably those same differences in the legal profession when they started out to look after their affairs.

Q I gained the impression from Mr. Lennox' evidence, the first two or three years of the B.D.A. were not a success, from his point of view, but there has been a marked improvement in recent months. I think that is the impression we all gained.

MR. HOUCK: I think he said he gave them a good dose of medicine.

MR. JOLLIFFE: Yes. He also testified -- I cannot quote exact figures, but something in the neighborhood of 140 broker-dealers at the present time, and if you deduct those who are also members of the Stock Exchange, and if you deduct those who function outside of Toronto, but not in a very large way, and if you deduct those who are inactive, not very active in Toronto, you have about 80 left.

A I think that is substantially correct. Your

starting figure is larger. It is roughly 135 plus 28.

MR. WISMER: We have 164 members --

THE WITNESS: Around that, and there are stock exchange houses to the number of 28; about 25 of which are in business in other places than Toronto, which leaves around 100, I guess.

BY MR. JOLLIFFE:

Q. Around 100 in Toronto?

A Yes.

Q Of which I think he conceded that a number were inactive?

A Well, there are certain houses, Mr. Jolliffe, in the Broker-Dealers Association which do not deal in primary distributions at all. They are strictly on a commission basis. Tom and Barndt is a notable one. Some are not active.

Q Would you say there are not more than eighty who actively engage in primary distributions?

A I do not know. Whatever I said would be a guess in connection with it. There might be 80 or there might be more.

Q There might be 80 and there might be 90?

A I doubt if there would be 90, because I know of two or three houses which deal strictly on

a commission basis. They deal in unlisted stocks entirely on a commission basis.

Q As agents, and not as principals?

A That is right.

Q I suppose they are not brokers in the strictest sense?

A That is right.

Q Mr. Lennox testified from his point of view at least, he has trouble with some 30 or 35 of them. I think "trouble-makers" is the way he described them.

You may not wish to comment on that figure because that is his figure, and he is the Commissioner.

A I would not want to comment on the figure of the trouble-makers, because I think I am a much tougher-hided customer than Mr. Lennox.

What do you mean by"people causing trouble"? I was there when there was lots of trouble, too. These things are different with different people. It is very hard to make comparisons.

Q If one accepts-and you do not have to if you do not want to-- but if one accepts Mr. Lennox' statement as being well-founded, namely, that there are 30 or 35 trouble-makers, out of a group of 80 or 90 broker-dealers engaged actively in primary distribution, then the question naturally arises, what are the prospects

for successful self-discipline in a group which has such a large proportion of its membership who have to be designated or regarded by the Chairman of the Commission as "trouble-makers".

A Of course, I do not accept his figures, as far as that is concerned. Frankly, I do not know how anybody could give figures that definitely. I never could, when I was there; I know that.

It is not my experience, and I do not think it has been his, that the Broker-Dealers Association is not functioning pretty much on a common front, where it should be. I think the record shows that.

Q The question relates, I think, not so much to the work or the policy of the Association at the moment, with which Mr. Lennox is much encouraged, but to a few of the Association, which, if he is right, is a very substantial proportion of people in it, who are, to use his expression, "trouble-makers"

A Well, I do not feel that way about it and I do not accept the proposition. You say I do not have to so I am not.

Q You disagree with his view of the present personnel of the Association?

A Well, what about it? Has he not said in his

evidence that the Board of Governors of the present Association are doing a good job?

Q Oh yes, he made that very clear, as far as the present tendency of things is concerned, even though he also made it clear that there are some points on which he does not agree with the Association, but, nevertheless, he thinks the Association is doing a good work, and there has been marked improvement.

As to the question of amending the Act, to remove their requirements about the requirement about the delivery of a prospectus; is that still the wish of the B.D.A.?

A I would assume it would be, Mr. Jolliffe. It was certainly my wish before the B.D.A. came into existence, with respect to the 1947 Act. I do not believe in it. I believe in the principle which applies in the S.E.C. and that is, if anybody wants to request a prospectus, he can get it. I think that is the only sane way of going about it. That is my opinion.

Q But not the B.D.A.'s, and that opinion was formed before the B.D.A. was in existence,

A You asked a question, and I recommended that, but the recommendation was not accepted.

Q Well, do you say that on the very practical ground that most people would not read it?

Q Certainly on that ground. You have examined the Securities and Exchange Act, have you not, There is no such requirement there.

Q I am well aware of that.

A My view is that is the sane and proper way to handle it.

Q But does it do any harm to have that requirement,

A Oh, I do not know what harm it does. I do not think that is any excuse in connection with it, really.

My experience is borne out by the people of the Securities and Exchange Commission, - so they have told me, - and they have had an excellent opportunity for going into that, because of the number who ask for it before they invest. My experience is there are comparatively few people.

I do not know. It may be a question of place. A certain amount of fraternalism is involved, or perhaps somehow people are not supposed to be able to conduct their business as intelligent people, and, therefore, protection should be thrown around them in large doses. That is a philosophy associated with this, about which I am not too keen.

Q We are told in this publication (indicating) issued by the B. D. A. in 1950, entitled "Self-Government in

the Securities Industry", that there was another change in the Act with which the B.D.A. was concerned. It was said in that document:

> "At the present time, this Committee is also working toward two other amendments to the Act. One of these is the elimination of Section 57, which forbids calling a private residence either on the telephone or in person, within or outside of Ontario, for the purpose of trading in any security unless certain specified conditions have been met. Admittedly, this Section was drafted into the 1947 Act as a result of past abuses, but with the B.D.A. exercising a general supervision of its membership in addition to the enforcement of the Act by the Ontario Securities Commission, it is no longer believed to be anything but a drag on business. Even the strictest securities legislation in force today -- the S.E.C.-- does not prohibit calls at private residences."

Do you know whether that request is still being put forward by the B.D.A.?

A I do not know. I know the story of that, pretty well. There is an inaccuracy there in that it was

suggested it came forward in 1947. It did not. It came forward back in 1945, and probably before that, and it has just been carried forward.

But, as I stated on Friday when I was here, that used to be the sort of activity which seemed to cause the most difficulty in the securities business. Now I know, that being the case, naturally there were people who advocated it, and I cannot blame them. People who came from Middlesex, or Waterloo or some of the other constituencies, advocated that, too. You can understand that.

Now, it is not the problem today that it was, I suppose. After all, people are permitted to sell insurance; they are permitted to sell lawn mowers, or anything else, as far as I know, and I think the securities people feel much the same way about it, and they feel that probably it is outmoded now, and I do not know what their present position in regard to it is.

Q But there are restrictions also on what people can say when they sell insurance, but that is another story.

MR. JAMES: And a lawn mower is generally guaranteed.

THE WITNESS: I think you are changing the subject there. We are not talking about people going to sell insurance, but securities, in private places.

BY MR. JOLLIFFE:

Q. You mentioned people selling insurance?

A Yes.

Q I am pointing out there are restrictions on that, too; not the same restrictions.

A No. If that is what you mean, all right.

Q I am not changing the subject. You mentioned insurance, and I wanted to qualify your remarks about it. We had a little discussion during the last Session about this matter of what may be said by an insurance salesman.

I gather from what you say that this is no longer an issue; is that correct?

A No, I did not say that. I do not know whether it is or whether it is not. I have not been obstructive about it. You are talking about the Broker-Dealers Association.

Q Yes.

A I do not say it is an issue now. Maybe it is.

Q What I am interested in is that this publication of March 1st, 1950 -- that is not so very long ago --

states that the legislation committee was then working toward this amendment to the Act.

A That is right.

Q All I want to know is, whether that is still being done, or has it been abandoned?

A I do not know whether it has been done, and I do not know whether it has been abandoned. It is likely that Mr. Wismer will know more about that than I.

Q From your experience, do you think, yourself, it would be a good thing to remove the ban on telephone calls?

A On telephone calls?

Q Yes, as it appears in Section 52.

A That is, calling at residences, you were talking about? They did not ask to have telephone calls stopped.

Q Oh, yes. This says:

"At the present time, this Committee is also working toward two other amendments to the Act.

"One of these is the elimination of Section 57 which forbids calling a private residence either on the telephone or in person, within or outside of Ontario for the purpose of

trading in any security unless certain specified conditions have been met."

Subject to certain conditions. That is one.

A Well, I do not know that I am very much in favor of loosening up, as far as the telephone situation is concerned. But to the other one, I do not see any objection.

Q You mean calling at private residences?

A Yes.

Q You would not see any objection to calling at a private residence, even if the resident had not requested information?

A Oh, well, I do not see there is very much point in that. I do not think that nowadays there is any difficulty likely to accrue from any relaxation of that.

After all, people are quite at liberty whether they admit somebody to see them or not. I have it all the time, and so have you. So many people who want to pester you at home, telephoning and all the rest of it.

BY MR. GRUMMETT:

Q. But they have some visible wares to present, and you can judge the merit or demerit of

those wares, from what you see. In this case, it is a different matter altogether.

A Well, I suppose it might be.

BY MR. JOLLIFFE:

Q. What is the change in situation from that of ten years of fifteen years ago, when there were many complaints about both telephone calls and calls at houses, usually the houses of farmers? I take it that Section 52 has stopped most of that.

A I do not know. Is it assumed because it is there, that it was the wise thing to do at the time? I do not make that assumption.

Q That cannot be assumed, but it was done.

A That is right.

BY MR. GRUMMETT:

Q. Has it not met with the general approval of the public, as well?

A I do not know, Mr. Grummett. I can tell you this; it certainly has met with the approval of a large section of the public as to the deluge of literature which used to go out. I have personal knowledge of that. Whether that is the case, or whether it is not, I really do not know. I would be inclined to think that general public opinion

would be against relaxing along those lines either way, as far as that goes.

Personally, I see more objection to relaxation with regard to the use of telephones, than the other. That is my view.

MR. GRUMMETT: I think they are both in the same category.

BY MR. JOLLIFFE:

Q. Mr. McTague, I do not understand your reference to the "deluge of literature". Section 52 does not relate to literature except in a very indirect way.

A Let me make that clear. I am now talking about back to the days of the "jungle", about which I was speaking in the first place. The literature which went out without any scrutiny, deluged the United States and this country, and all over Ontario. It was most objectionable, and people received scads of it.

Now, as the Commission began to take hold of that, and some of it provided a basis upon which licenses and registrations were taken away. There were thousands of pieces of mail coming into the Securities Commission at the time, highly approving of it.

BY MR. GRUMMETT:

Q. Highly approving of the steps taken by the Commission.

A Oh yes, sure. A great many lawyers -- to get down to our own profession -- used to get thirty-odd pieces a week or something like that, and they objected to it.

BY MR. JOLLIFFE:

Q. It was stopped in another way, but this Section and its predecessor, also restrained telephone calls and calls at residences?

A That Section was utilized in many prosecutions and many convictions.

Q Well, is it not a fact that the tendency now is for literature and telephone calls to go abroad, rather than within Ontario?

A I do not know the percentage of it. I cannot tell you that. I would imagine that probably, with the difference in population, the greater bulk of it would go to the United States, but it is not a custom of the brokerage business to"over-weight" it that way. Generally speaking, they are a little too clever for that.

There have been certain decisions which were

brought down which did stop completely, all-out, one hundred percent. mailings to the United States, as far as that goes.

Q Was not the first of those decisions, in point of time, when you were Commissioner?

A Yes.

Q I forget the name of it. The principle of the thing, as I recall it, was that the Commission was not prepared to license people to do business if they were going to lose their license facilities abroad, without doing any serious business in Ontario?

A That is right.

Q I take it that principle was arrived at, not by any reference to any specific requirement of the Act, but on the ground of public interest?

A That is right.

Q Where do you think one draws the line between a one hundred percent. campaign, directed abroad --

A Nobody can. God Almighty could not draw that line. There is no chance of it. It just cannot be drawn; that is all.

In that particular case, there was utilization of the license being employed almost one hundred percent. for doing business in the United States. That was all.

I do not know where you would draw the line.

Q And that appeared to be contary to public interest?

A Well, there were other factors in that case, too, which were not very constructive.

Q If that type of thing is contrary to public opinion, what is the difference in principle where fifty percent. of the campaign is directed to the United States?

A I do not say that type of operation. It is a matter of degree all the way. After all, if people are getting something in the nature of a reasonable "break" for investing, and we are acquiring money to develop natural resources, and so on, you simply have to use your best judgment in specific instances.

It might have been, in that case, that somebody else who perhaps had a different deal or something of that kind, might have been treated in a different way; might have got another chance; might have got a warning, or something of that kind. You just cannot sit down and pattern these things out in a pen and pencil way, or on an engineering basis -- in the administration of this job, in my opinion.

It was never intended to do anything other than that.

My recollection is that every single piece of mail went to the United States in that mailing as far as that is concerned.

Q If it is legitimate to solicit funds from the United States in that way, what difference does it make whether it all went to the United States, or just some of it?

A I do not think it made any real difference. I do not know if today I had to deal with it, just what I would do. On the theoretical proposition you are putting, I would deal with it some way. Naturally, there is a difference between whether you are operating and doing business in Ontario. Ontario is only entitled to license people to do business in Ontario, as far as that is concerned. You do not license them to do business in the United States. But you cannot prohibit them from doing business in the United States.

Q Did I understand you correctly, at the beginning of your evidence, that in your view, it is not constitutionally nor legally possible to restrict international telephone communication?

A Certainly. That is not competent to the Provincial Legislation.

Q Let us suppose that is true. Setting aside for the moment the legal and constitutional impossibilities --

if they are impossibilities; what do you say about the desirability of it? Do you think it would be desirable or undesirable?

A I am not interested in the desirability of it. After all, I am an administrator. What is my interest in the desirability or undesirability?

Q If we talk about "public interest", you may have some idea of the desirability or undesirability.

A Yes, but the matter of public interest is in the confines of Ontario, is it not? How are you going to get a public interest related to something outside, altogether?

Q Surely you will agree that what occurs abroad, may affect the public interest in Ontario?

A It may, but what difference does that make?

Q It would mean that one cannot escape consideration of public interest, merely because the destination of the telephone call or letter is some foreign post office.

A That is true. It depends on the facts in each particular case, and how a man is conducting his business, and what he is doing.

I repeat you cannot plot this out on a particular diagram; it just does not lend itself to that.

Somebody might conduct business in the United States in a way that, if he had done it here, would be contrary to public interest. All right. They would take his license away. I did that with very many of them, in my time.

On the other hand, he might be doing business in such a way that while you could take his license away from him, you could not successfully prosecute him.

There is not anything permitting you to hide behind the question of "public interest" in connection with any salesman, without giving some consideration to what the facts are. You just cannot do that. You cannot arbitrarily say "Simebody is trading in the United States, and it is against the public interest in Ontario". I do not believe that.

BY MR. HOUCK:

Q You believe we should encourage the investment of United States capital,

A Oh, definitely.

BY MR. JOLLIFFE:

Q That raises a very interesting point, in connection with which I would like your views. We find here that statemen made. and I notice in much of the Broker-Dealers' literature, that the impression is - innocently

or otherwise given that that facilitates the flow of capital into the development of Canadian natural resources, through this particular channel -- in fact, the illustration is given that the oil boom in Western Canada was made possible by this type of financing.

But what one never sees, and what we have not heard about in this Committee, is an acknowledgment that the Western Canadian oil is being financed, not by the members of the Broker-Dealers' Association, but by certain of the larger oil companies, who have been in business for generations.

A I think that is correct, without a doubt. What I mean is, that the portion of the money that is being expended in Alberta and in Saskatchewan, and in the west, is by far greater than has been raised here through public subscription for that particular operation. I have no doubt about that.

Q Exactly.

A And still, at the same time, you know there is a place always in an economy for public financing. I mean, if you want to take it this way, Mr. Jolliffe.

Take the economy in South Africa. There are no Crown lands, and the little fellow cannot stake. There is no public financing; it is all run by half a dozen families.

If you want that kind of economy, just exclude all this kind of business. That is excluded because of the fact that there are just no Crown lands left, and if you are going to find a gold mine, you will have to buy it, and only a very few have the money to buy them.

Q I do not know of anybody who has made that suggestion here.

A I am saying the financing which comes from Bay St. is a very important factor in connection with the development of the natural resources of this country. If you do not have that type of financing, then all you are going to have is control by the big interests or by people who are fortunate enough to get in on that basis in the beginning, and then have sufficient capital to be able to carry it through.

There is a constructive place for it.

BY MR. HOUCK:

Q. Could we develop our natural resources without that kind of financing?

A I would not think so, and develop them in a reasonably equitable way.

THE CHAIRMAN: Well, gentlemen, it is 5.00 o'clock.

MR. JOLLIFFE: Just a moment. This is an important point and one on which I would like to hear Mr. McTague's elaboration.

THE WITNESS: You really do not need elaboration. I suggested you read Huffman yesterday or the day before, The view that I am expressing is expressed in there.

Q I know that view, but I would like to hear more of the reasons. Mr. Houck has asked you if it is possible for our resources to be developed in any other way. I think that is a good question. I do not know whether your Association has any figures. I would be interested in knowing what proportion of the monies invested in the oil development in the last five years amounted to. There were several hundreds of millions of dollars invested. I would be interested to know what proportion of that capital was through the Broker-Dealers' channel. My opinion would be it was a very small proportion.

A I would agree with that. I do not know what it is. But you have people like the Texaco, the Humbell Oil, there in the United States, and the Imperial, and some of the standard companies and all the rest of it, Maybe they should be given exclusive rights

in connection with it, and the broker-dealers not have any chance.

Q It so happens that there are, on this Continent thousands of little oil companies. It is not just a question of the big interests at all. It is one industry in which there is still room for a very large number of companies.

A There are very few of the smaller ones in the West, outside of some small local ones, like the Turner Valley, and some other small ones originating in some places in Calgary, or Edmonton, and so forth, In fact, I am a shareholder in a couple of those myself, as far as that goes. They were not formed by the Broker-Dealers. And I happen to belong to a syndicate which was composed of lawyers, from which a very responsible oil company has come. I just happened to be there.

THE CHAIRMAN: Well, gentlemen, it is 5.00 o'clock and we will adjourn until tomorrow at 10.30.

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---The witness temporarily retired.

---Whereupon the further proceedings of this Committee adjourned until Tuesday, August 28th, 1951, at 10.30 o'clock, A. M.

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ONTARIO

# PROCEEDINGS

of the

# SELECT COMMITTEE OF THE ONTARIO LEGISLATIVE ASSEMBLY

APPOINTED TO ENQUIRE INTO AND REPORT UPON CERTAIN MATTERS CONCERNING THE ADMINISTRATION OF JUSTICE IN THE PROVINCE OF ONTARIO.

Vol. 22.

Tuesday, August 28, 1951.

R. C. Sturgeon,
Official Reporter,
Room 121,
Parliament Bldgs.

TWENTY-SECOND DAY

Toronto, Ontario,
Tuesday, August 28, 1951,
At 10.30 o'clock a.m.

- - - - - - -

---The further proceedings of this Committee re-convened pursuant to adjournment.

---All parties present.

---Same appearances as heretofore noted.

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THE CHAIRMAN: Gentlemen, the meeting will please come to order.

CHARLES P. McTAGUE,

A witness previously heard and now recalled, who, having been already sworn, continues his testimony as follows:

BY MR. HOUCK:

Q Mr. McTague, yesterday, when we adjourned, we were discussing United States capital on our stock markets here. Have you any idea of the percentage of

United States capital coming in on the Exchange?

A No, I have not, Mr. Houck. As far as the investment in the Exchange itself, it is almost entirely Canadian capital, but there are one or two New York houses which are members of our Exchange here in Toronto.

As to the volume of American money coming in to purchase securities on the Stock Exchange, I would not know. You hear all kinds of rumours all the time about American money being largely in some certain stocks. Right at the present time it is supposed to be Imperial Oil, but I have no idea of the break-down, and I think it would be pretty difficult to get.

BY MR. JANES:

Q To what extent would explorations in the north country -- mining and so on -- be supported by American money? Have you any idea of that?

A Mainly only historically, but also from perhaps making some guess or estimate as to American money coming in for that type of project now.

Naturally, many of our very large producing mines, in the old days, were, in the main, financed by American money. I think International Nickel is probably the outstanding example of a very large one.

Operations like the Lakeshore Mines -- a very, very large portion of that is held in Buffalo. They still have a transfer office over there, and the stock is traded and transferred in Buffalo. There are many others.

There was a mine, I think it was called "Duquesne" -- it has now been changed and consolidated a couple of times. In the main, it is a Pittsburgh capital.

Now, Mr. Janes, I would not know the volume of American money going into the primary explorations, but I think a very large proportion of it would be American money, which would be going in.

BY MR. HOUCK:

Q In recent years there was a lot of American money in Steep Rock?

A Oh, yes. Steep Rock was originally -- how shall we call it? A promotion? The original financing was largely provided by Mr. "Joe" Errington, who is now dead. General Hogarth and Charles McCrae were in there, and others.

Subsequently it became such a very large proposition that it needed extensive extra capital, and Cyrus Eaton came in, that is, the financial firm

of Otis and Skinner of New York and Cleveland. Their head office is in Cleveland.

They provided a very, very large portion of the junior finances, and they, in turn, procured very large loans from the Reconstruction Finance Corporation, which is an American Government operation, to bring it into production.

It is very extensively financed by American capital. That is quite correct.

BY MR. JOLLIFFE:

Q Well, Mr. McTague, the Canadian taxpayers also made a contribution.

A I am not disputing that.

Q I do not know that they could have come into production without the work done by the C.N.R., and the Ontario Hydro.

A That is right.

THE CHAIRMAN: On the other hand, if you put it that way, the Canadian taxpayers make contributions to every place where the Canadian National has a spur line.

MR. DONNER: That is right.

BY MR. JANES:

Q I am not trying to belittle the Canadian investors, but what I am leading up to is, that there is no doubt but that United States has more risk capital than any other country in the world, to finance these things, and it must have been almost impossible to finance this great venture without American capital. We have not enough money here to do that.

A Yes, I think I would agree with that. As long as I can remember here, around the building, there have been classes of prospectors under the auspices of the Department of Mines, and it certainly goes back to the time of the hon. Charles McCrae. I can remember back that far, where people were specifically schooled and trained to become prospectors, to enable them to find and locate properties which seemed favourable to exploration for minerals, and so on.

I would say, Mr. Janes, that has indicated the desire and policy of a succession of governments, going back a long time, to explore the mineral resources, and the mining resources of the province,

and that these would be premised in an economy like ours on the proposition that private capital would come in to be available to bring those properties into production, or bring them to a good try, because I imagine there are very few mines which are actually brought in, compared with the number of ventures which are made.

Over that period, there has always been a substantial amount of American capital, and it seems to me that it is a perfectly natural thing under the economy we have.

Furthermore, on the basis of results, it has done the job.

Q All right. Now, in Labrador, where a development is supposed to be coming on, and in Eastern Ontario; is that not largely American capital financing them?

A Labrador was originally a combination of the Hollinger -- the Timmins interests -- and through some early financing of Hollinger Mines, and the N.A.Hanna Company, which is a very large company, in the iron ore and coal business in the United States. They became partners.

Then they admitted other people in, and

the insurance companies in the States, if I recollect, took a large part of the development. That is true.

BY MR. JOLLIFFE:

Q Mr. McTague, does the securities business enter into the financing of the development -- the Labrador development?

A I do not think so.

THE CHAIRMAN: The stock is listed.

THE WITNESS: There is no public offering so far. I think there will be.

BY THE CHAIRMAN:

Q The Labrador Stock is listed on the Toronto Stock Exchange?

A Oh, yes. It is public that way, through the Exchange.

Q Is it a primary distribution, listed on the Exchange?

A I would think so. I do not know for sure, but I would think it was probably financed to a very large extent -- at least, they got a very substantial amount of capital, and then probably

applied for listing, and maybe there is some of it in primary distribution. I would think so.

BY MR. GRUMMETT:

Q Mr. McTague, in referring to those who had contributed to build up Steep Rock, you mentioned Cyrus Eaton.

A Yes.

Q Was not his contribution in money a very minor contribution; he acquired a tremendous block of shares at a nominal price?

A I know what you mean. He got a contract which did give him a substantial block, but, nevertheless, he bought a substantial block, too. He got the over-riding commission on the iron ore, for quite a period of time.

Q Which gave him a very substantial holding in Steep Rock at a very nominal price.

A That is right. I knew something about the operations, and I would take it that the people originally in it had come to an impasse, as far as putting more capital into it, and they paid a pretty steep price for the financing.

BY THE CHAIRMAN:

Q They needed big money, and the only way to get that big money was to pay any remuneration.

A That is right.

BY MR. JOLLIFFE:

Q He succeeded in getting the thing financed in a number of ways, and for that he was handsomely rewarded?

A No doubt about that.

BY MR. JANES:

Q We have read about Steep Rock, and it came to a point where they could not go any further, the expenses were so great, unless they got American capital?

A That is right.

BY MR. HOUCK:

Q Is it true that the average American citizen is more willing to take a chance on the market than the average Canadian? That is, they are not as cautious as we are here in Canada?

A I would not know that. I know of some types of ventures which have been much less cautious and much smarter than our people have been. I refer particularly to the inter-provincial pipe line, as far as that is concerned. That was bought in the United States and sky-rocketed very fast.

BY MR. JANES:

Q Does that not all lead us to the fact that this government and the Broker-Dealers' Association have a very great responsibility to see that nothing happens to prevent that American investment capital coming here?

A I think basically that is correct.

When you admit a basic proposition, then you have to take into consideration the situation as it exists -- as you find it.

There have been statements made, Mr. Janes, purporting to indicate an over-all U.S. policy with respect to investing in countries which are in the alliance, shall we say -- friendly countries.

That declaration or policy along that line, was made by President Truman, I think some time in the

late spring or summer of 1945, and I think it has been indicated since. That represents high policy.

Now, you have a special problem, as far as mining and mining ventures, and so on, are concerned. The cost of getting an issue qualified in the United States with the S.E.C. on the "long form" as they call it, that is, the particular type of qualification which includes prospectuses which are scrutinized and revised, and the delays and extensions, the twenty-one day periods, as I recall it, and so forth, and it is a very, very tedious process, and also a very, very expensive process, while you are in the position of getting started.

If you had an established business, to which it applies quite properly, there is no question about it. For instance, if you are a going concern in the pulp and paper industry, and you wanted to do some financing over there, you would not have a great deal of objection to meet to your going there. But where it is speculative, and you are not trying to get too much money, but want to get the exploration capital, then it is a very tedious process.

They recognize that over there, because they

have a special provision. They are given power to make regulations, and I think it is regulation "A" in regard to the $300,000 exemptions. Their Regulation "A" enables people in that position -- which applies to oil ventures to a large extent -- and permits the sale of securities to the limit of $300,000, by complying with the short form, which is a fairly perfunctory kind of operation.

That has been used in connection with public financing of some of the oil ventures and the oil companies, but any foreign operation is excluded from that privilege, and that is one of the suggestions which was made over here, to try and get things worked out along that line, that is, to have that privilege extended here, thus making the onus easier, in line with what they were already doing.

I heard it said -- I think it was said by Senator Malone of Nevada, that since the S.E.C. has come into operation, there have been no new mines brought in through the means or by the route of public financing. There have been new mines brought in, for instance, the Anaconda and some others by some of the large companies, who would buy new mines with their own

capital.

We are in the position, as I see it, where we are right in the midst of an expanding economy; we are not a mature economy, like the United States, and, therefore, we have to do all we can to get financing in a reasonable way, short of fraud, as we understand it.

BY MR. JANES:

Q After all, twenty-one days is a very short span in the life of a company?

A That is all right, where you have a mature company or operation, but you see, this twenty-one days is the technique. You apply for qualification of your issue down there, and you have a twenty-one day period, during which time the people who are charged with that responsibility, look into the prospectus, and call attention to various things, and so on. Then you have a twenty-one-day hoist, and then you have another twenty-one-day hoist. That is the difficulty with respect to our attempts to get qualifications, insofar as our mining companies are concerned.

Q I had an inquiry the other day about this development that we are reading about, here in Eastern Ontario, and I have a company in my riding which supplies material for that work, and they were afraid of the Bethlehem Steel?

A Yes. Well, of course, Bethlehem Steel has something, undoubtedly, to develop there for its own purposes and its own uses, but one would not think there would be any offering to the public there. There are other properties around there --

Q The point is, it is American capital?

A Yes.

Q And that must make it easier for them to come in; they have a representative in Toronto. I found that out.

BY MR. JOLLIFFE:

Q Mr. McTague, you are aware, no doubt, that the reason the S.E.C. has given, according to their statement, for being unable to extend the so-called "short form registration" -- strictly stock exemptions -- to Canadian securities -- is that the person responsible would be beyond the reach of their

enforcement agencies?

A They may have given that reason, but they did propose, as part of any such qualifications, that the person seeking it would return to their courts. To that we agreed. There is no question about that. There was no difficulty that I know of, in connection with that.

Q That is interesting, because it was not mentioned in Mr. McEntire's letter.

A Whether it was mentioned or not, it was a fact. I can vouch for it.

BY THE CHAIRMAN:

Q He also said that the average time required for qualification was about twenty days. I suppose that average includes qualification of government bonds?

A 99% would be government bonds and industrials.

Q So that it does not give any picture of the time required to qualify an issue of a mining company.

A That is right.

Q Certainly my experience was, twenty days was a fantastic statement. It ran into months.

A The figure he is using is one day inside the

first whirl of twenty-one days.

Q What happened was the delay was so great that by the time they came to the point of considering acceptance of the statements, conditions had changed, and new statements had to be filed, and it started all over again?

A Yes.

THE CHAIRMAN: What Mr. McEntire said on that point is rather significant:

> "This same average applies to all Canadian industrial issues filed with us."

THE WITNESS: I think that is right. There are very few industrial issues, though.

BY MR. JOLLIFFE:

Q Of course, the implication there is that the average would not be the same with respect to the Canadian mining issues.

THE CHAIRMAN: He does not say so, unless industrials were intended to include all those issues.

MR. JOLLIFFE: I do not think so. But some

Canadian mining issues have been qualified, or filed -- perhaps "filed" is a better word -- with the S.E.C.?

A Yes.

Q What would make it more difficult to do that in the case of a mining issue, any more difficult than in the case of an industrial issue?

A Well, it just requires naturally very much more study and more time to scrutinize your offering in connection with a mining issue.

I know of one which was qualified over there during my time as Securities Commissioner here, and it was fairly well matured, and fairly well financed at the time. I am referring to Giant Yellow Knife, which was, I think, qualified within a reasonable time, and was listed on the New York Curb, but it was already listed here.

BY THE CHAIRMAN:

Q I do not see why it should take so much longer for an ordinary mining issue, because, as I understand it, the S.E.C. statute is a disclosure statute merely; they do not have to go behind the statements which are filed with them, as long as the questions are answered.

A That is right, but only in practice, Mr. Chairman, they do. They definitely go behind, although the basic principle is exactly what you say.

When the file is made up, it is thoroughly checked -- the first filing — and you, almost invariably, have a subsequent conference, whether it is an industrial, or whether it is mining, as far as that goes. You have at least one.

Attention is drawn to your prospectus, and suggestions are made, and changes are suggested, and so on, as a result of scrutiny by S.E.C. personnel, who have the job of doing that.

Q I would think the scrutiny of the mining forms would be more simple than the scrutiny of some of the complicated businesses, which are well established.

There are very few facts which have to be stated in the mining forms.

A Have you ever tried to complete the form?

Q Yes.

A Then you know something about the difficulties. When you have to trace detailed changes back, it is a long process.

Q But you would think the time required in regard to mining would be less than in the larger enterprises,

which have many properties, and which have already become established.

A I have always felt this way about it -- at least not "always", but from the time I got some opportunity to become fairly familiar with the business -- that over there they resented the methods which they claim are employed. I do not think we could be too critical of the organization of the S.E.C., which is charged with the policing of sales of securities in the United States, in a federal way, but, as I say, they have become very critical, naturally, of the methods it is claimed are employed in respect of the sales of securities.

Now, once they get that attitude, I am perfectly satisfied that from the point of view of administration, insofar as Canadian mining ventures in the early stages were concerned, they just were not going to qualify them, unless it was an exceptional issue. You have twenty-one days' delay, and another twenty-one days' delay, and another twenty-one days' delay, until you are just worn out. That is all. You just cannot do it.

BY MR. JOLLIFFE:

Q When was this?

A This has been going on since I came to the Commission in 1945. I believe it is going on to-day.

BY MR. JANES:

Q I suppose it was started there in the first place to protect their investors?

A I think that is what they feel about it.

BY MR. JOLLIFFE:

Q You think their intention is not to grant registration to a Canadian mining or petroleum issue, unless it has exceptional merit? Is that your belief?

A Yes.

Q Then what do you say as to the paragraph in Mr. McEntire's letter, which follows immediately after the sentence I have previously quoted, that is, the sentence about the same average applying to Canadian Industrial issues.

I notice then he went on to say, at the top of the next page:

> "Of course, there are issues where a good deal more time is consumed in the registration process. This is particularly true as to certain

mining and petroleum issues, although some of them, including Canadian mineral issues, do meet the 20 day average referred to above. To some extent, the delay in these cases can be said to result from unfamiliarity with our procedures -- a situation, incidentally, which experience can easily rectify. But we have found that the chief reason for delay has been the unwillingness of the issuer to make the disclosures necessary to tell the whole truth and thereby fully inform prospective investors of the facts.

Last year I had a test survey made of some twenty-eight Canadian mining and petroleum issues registered with us over a three-year period. We found that only two of the statements were held for the statutory period after being corrected according to the letter of comment. The average waiting period for all of the issues, after correction, was 6.5 days and the median 5 days, as against the twenty days provided by law."

He then states there have been twenty-eight mining and

petroleum issues registered over a three-year period.

A They gave me a list of fifty which was withdrawn, and they were withdrawn because it was just one period of delay after another.

BY MR. DOWNER:

Q On account of the delay?

A Yes. You might get twenty-eight, but what is twenty-eight, in fact, if you include a few like McIntyre, and Giant Yellowknife, and a few others of that group.

Q He alleges that the chief issue was unwillingness to make full disclosure.

A That may be true. I would take that cum grano saltis, from my experience down there.

BY THE CHAIRMAN:

Q You had better translate that.

A Oh, I am sorry, with a grain of salt.

BY MR. JANES:

Q I am wondering if it is not possibly a case of chickens coming home to roost. We have been doing a bad business, and we have been deceiving people

down there, and not co-operating with them, and probably we now have to get busy and build up a reputation for proper trading.

A I think that is exactly correct. That has to be done somehow or other, but I think it is possible of achievement.

I have worked on it, Mr. Janes, when I was here. I went down when the S.E.C. was still located in Philadelphia. I was there a couple of times, and I was in Washington, trying to find out what could be done, and how it could be worked out, and so on.

But during that whole period I was met with only one substantial thing, and that was "extradition".

BY MR. DOWNER:

Q That was their only thought.

MR. JANES: Apparently you have got over that hill now.

THE CHAIRMAN: I think it is quite apparent from Mr. McEntire's letter, that they see no possibility of arriving at any joint arrangement between the Ontario Securities Commission and themselves, which will be effective, and the only arrangement they think will be

effective, and the only thing they are working for, is extradition. That is what they say. That is the way they view it.

THE WITNESS: Yes.

BY THE CHAIRMAN:

Q That seems to be perfectly clear, from Mr. McEntire's letter now?

A Yes.

Q And any further attempt to make any arrangement or concession or any other negotiation on a provincial level, was useless? That seems to be the import of that letter.

A I think that is their viewpoint, although, mind you --

MR. JANES: They have modified it very greatly, have they not?

THE CHAIRMAN: They have modified their demands with respect to an extradition treaty.

But he makes it very clear -- and they take the position -- that they do not think there is anything which can be done, short of an extradition treaty. They

are entitled to their opinion, and they may be perfectly right, but that is their position.

THE WITNESS: Yes, that is right.

BY THE CHAIRMAN:

Q And they make it very clear that they realize some of the difficulties under which we labour with respect to inter-provincial trade. They realize the constitutional difficulties, and apparently they do not expect we can do very much more than we have been doing, so that extradition is the solution they are working for.

A At their request, I wrote a letter or opinion in regard to that, and I may say, I submitted it to Mr. Lennox, and we went over it on a couple of occasions before it went out, and that might serve to give them the impression that while we had certain rights to take away a person's registration, and that sort of thing, it was a rather indirect way of solving the situation, which was fundamentally coming under the aegis of the Federal Government.

BY MR. JANES:

Q I think we should put ourselves in the other

fellow's place, and see it from his point of view. I imagine we would take the same stand as they do, if we were in their position.

BY THE CHAIRMAN:

Q That may be, but, frankly, a great deal of criticism has been directed towards what the Ontario Securities Commission has done, but the S.E.C., according to Mr. McEntire's letter, is not critical of what the Securities Commission is attempting to do up here. They recognize the limitation of the authority of the Securities Commission, nevertheless, the result of some of the Press campaigns in the United States, and the way it has been taken up in some quarters here, has reflected to some extent upon the Ontario Securities Commission.

A Oh, yes.

THE CHAIRMAN: Quite unfortunately and unjustifiably.

BY MR. VILLENEUVE:

Q The problem appears now that we have to instill confidence in the American public?

A I agree.

THE CHAIRMAN: If they are still investing, some

of them seem to retain some confidence.

BY MR. JOLLIFFE:

Q Mr. McTague, apart from your extradition matter, which may be settled somewhere else, can you suggest any constructive alternative, which might be put forward in order to reach an understanding with the S.E.C.

A Well, Mr. Jolliffe, I do not know just how you are going to reach an understanding. Once that point is settled, maybe they will then go to some extent in the direction of a campaign similar to their regulation "A". I would not be surprised if they would.

But really, here, it was always my view that based upon experience and observation, this situation would begin to improve, once this matter is settled.

Once you are able to build up on the street a sense of responsibility in connection with their affairs, which are quite apparent in different human organizations of that kind in reference to securities -- and in saying that, I am referring to the Toronto Stock Exchange and to the investment dealers.

Now, in all fairness, as far as the United

States is concerned, the Broker-Dealers' Association has never had a proper opportunity to be able to handle the problem. I mean, they are just in the same position that you or anybody else is, who reads a lot of general statements about what goes on, on a wholesale basis. That will not help at all; you have to have cases. I have always felt they would be handled.

For twenty-two years the securities business has been in the hands of a government agency -- a commission; the Ontario Securities Commission. It has had two wings during that period, the Stock Exchange and the I.D.A.

Now, back in the good old days of 1927 and 1928, even some of the members of the I.D.A. were not beyond criticism, as far as that goes.

I am very sincere and very optimistic about this, that given a fair chance, this matter will be handled all right. Nine-tenths of the trouble, as far as the S.E.C. or their group is concerned, is with the amount of telephoning -- high-pressure telephoning.

MR. JOLLIFFE: That is right.

MR. DOWNER: Yes, that is right.

THE WITNESS: I think you will find they are

honest enough to admit that along other lines, there has been substantial improvement made.

MR. JOLLIFFE: Oh, yes, absolutely.

MR. DOWNER: That is right.

THE WITNESS: I am not going to say there is not high-pressure telephoning done. I think probably there is, and I agree it is rather difficult. But both the Commission and the Association are going to be pretty helpless in that proposition, unless they get evidence of specific cases.

If down there they are going to adhere to the proposition of not doing that, we are not, I think, going to be able to help them a great deal. They are going to rely completely on extradition. If they have extradition -- and that constitutes a sanction which puts a certain amount of fear into the high-pressure men-- it undoubtedly will have that effect, then, if they want to co-operate with specific facts and cases, I think we can do a great deal to be helpful, and do a great deal to restore confidence, and so on.

There is no use in talking. They get general statements along that line about the United States

investing public losing confidence, generally speaking. Well, that is just a lot of nice propaganda. You can still go down to New York and sell securities of every kind and character without very much difficulty, whether they are governmental -- as British Columbia was very recently -- or whatever else it is.

I have not the slightest doubt that mining securities of a speculative type, when the mine is still in the making, and not a producer, probably are in disrepute to a large extent, and attempts should be made to compose that situation.

But I think there is an obligation on their part, too, to give us a chance to try to do that.

BY MR. JOLLIFFE:

Q May I ask this question? Do you know whether or not the Broker-Dealers' Association has invited the S.E.C. to reduce the general to the particular ?

A Yes.

Q And supply you with evidence of specific cases?

A Yes. If you do not mind, Mr. Wismer will give you the exact facts in respect to that letter, and

everything else.

Q What do you think now of the proposition which, we understand, was put forward, when they met with the S.E.C. in October, 1949, which Mr. Lennox described, namely, that if the so-called "short form", or something like it, were extended to the Ontario Broker-Dealers, the Ontario Securities Commission would see to it that those who did not avail themselves of that channel would be deprived of their licenses.

A Oh, I do not know about that. I do not like questions which involve depriving somebody of a license, theoretically. You always have to get the facts in particular cases.

I do not know what Mr. Lennox has said, but, after all, we were there to try to get the matter worked out on an amicable basis, and I think probably if the avenue had come in, the Broker-Dealers' Association itself would have perhaps taken some steps of some kind.

I do not know what the Commission would do.

Q Mr. Lennox indicated to us that he thought that could be done.

THE CHAIRMAN: His point was this, as I recall it; if some arrangement would be made to permit the

filing of these short-form statements, covering three hundred thousand shares -- if they could be filed in the United States, and were acceptable, that would provide a legitimate channel, that is, legitimate in the eyes of the S.E.C., for selling securities across the border, and if that legitimate channel were established and agreed upon, then the Ontario Commission might look with very marked disfavour on anybody who went beyond that.

THE WITNESS: I would think so.

BY THE CHAIRMAN:

Q And that would give him some excuse or justification for dealing with those trades which went beyond the scope of this three-hundred-thousand?

A It would probably, in practice, take a variety of forms. You might have a house which, having secured that kind of opportunity, would go right down there and handle it that way.

Q The three-hundred-thousand would give them time to get started?

A Yes, on one issue. But you might have more than one issue, and you might have an extension of that three-hundred-thousand. I think they do that. As long as three-

hundred-thousand is issued at one time, I think they do that.

BY MR. JANES:

Q Does not the whole thing boil down to the situation that up to now we have been blaming them.

THE CHAIRMAN: What is that?

MR. JANES: We know now it is our fault, that the securities salesmen and the broker-dealers -- we must implicate them all, even the Stock Exchange -- are the ones who caused the trouble, and I think the Government and the people of Ontario have the right to clean them up.

I am one of those who thinks the Governments do things worse than anybody else, but I think we must clean house ourselves, and we must do it --

THE WITNESS: I agree with you, but you mentioned the Stock Exchange. There might be one or two Stock Exchange houses, but I do not think --

BY MR. JANES:

Q I am including anybody who deals in securities.

They are all implicated in this thing.

A Oh, yes, that is one of the problems, or at least the policy --

BY THE CHAIRMAN:

Q As a matter of fact, Mr. Lennox indicated that when he gets evidence on a specific case, he acts on it, but that he cannot get evidence of specific cases from the United States.

MR. JOLLIFFE: That is right, but quite apart from the American people and the S.E.C. complaints, the record of the Ontario Securities Commission during the last twelve months shows a very high casualty rate amongst a limited number of people in this business.

MR. VILLENEUVE: That is right.

BY MR. JOLLIFFE:

Q What is bothering some of us, is that the activities of these people who may not be very many, as compared with the total, and who constitute apparently not a large percentage of those engaged in the business, reflects on everybody in the securities business.

MR. VILLENEUVE: That is right.

MR. JOLLIFFE: Reflects on some very good issues.

THE CHAIRMAN: Is that not where the hope lies, that eventually the matter will be controlled by the brokers themselves, because the majority of them -- even after the break-down which has been given us -- the majority of them are people Mr. Lennox describes as people who do not give trouble, and they are interested in preserving their reputation, and to see that some of their own number do not "get away" with some of those things which reflect on all of them.

MR. JANES: And we, as a government should demand that.

THE CHAIRMAN: I think the evidence is that progress has been made in a comparatively short time, and if things go on, we can have definite expectation of greater improvement, subject to what Mr. Wismer may tell us. I think that is the impression we have up-to-date.

After all, they have an incentive to see that this thing is properly controlled amongst themselves.

MR. JANES: To me, it is a "must".

THE CHAIRMAN: As long as you have the majority

doing a legitimate business, and who regard ethical conduct as a matter of major importance, then they will see that the "fringe" people -- as they have been called -- will use their best efforts to see that their activities will be curtailed.

MR. JANES: And nobody else can do it but them.

THE CHAIRMAN: Not as well. Everybody else is on the outside looking in; they are in the inside, and in a position to know what is going on better than anybody else.

MR. GRUMMETT: I think the basic trouble in the whole matter is this; the Securities Commission will locate these men and punish them. Perhaps the broker-dealers do the same thing. But what happens? You drive them underground, and they get "fronts". If you could eliminate them completely from the field, there would be some improvement, but as long as these men are able to get behind a "front", they are just as dangerous, or probably more dangerous, than they were before.

MR. JANES: And nobody knows the "fronts" better than the broker-dealers themselves.

THE WITNESS: There are comparatively few, Mr. Grummett, in number, who lose their registrations, and then get back in the position of promoters, who are putting forward "fronts". There are very, very few, for the simple reason that there are very, very few of those who lose their licenses who have that kind of money.

BY MR. JOLLIFFE:

Q But we know they exist?

A Oh, I am not denying that.

BY MR. GRUMMETT:

Q Would you agree that those are the dangerous men? Those are the men who are destroying the confidence of the American investors in Canadian properties?

A A lot of them are contributing probably more than anything else.

THE CHAIRMAN: Shall we adjourn for five minutes?

MR. DONNER: All right. I will save my questions until after the adjournment.

EXHIBIT NO.132: Copy of advertisement in Northern Miner, as produced by the witness Lennox on August 22, 1951.

---Whereupon a short recess was had.

---Upon Resuming.

BY THE CHAIRMAN:

Q Gentlemen, shall we proceed. Mr. Downer was about to ask a question, but he is not here. Has anybody else any questions in the meantime?

MR. JANES: I have been monopolizing the time pretty much this morning, but I think probably Mr. McTague can do more to help out my viewpoint as to what can be done.

THE WITNESS: I think, Mr. Janes, that you will be getting evidence as to what has been done, which is pretty indicative of what can be done within the broker-dealers' operations. I think they will coincide very substantially with the view you have.

BY MR. JANES:

Q I am wanting it done a little faster than

is possible, perhaps.

A Mr. Wismer is the permanent man with the Association, and has all the records; he has been in it from the beginning.

BY MR. DOWNER:

Q Mr. McTague, it is against the law to solicit business or sales by telephone to any resident in Ontario; is it not against the law to solicit by telephone people in the United States, concerning the same securities?

A No; it is against the legislation as it is. Of course, your first proposition, Mr. Downer, is solicitation in Ontario. You understand there are some exceptions in connection with it.

Q Yes.

A I mean, people who are very close to the 'phoner, or people who have requested information, or something of that kind.

Q Yes, I understand that.

A That is right. It is in the Statute -- the Securities Act of 1947, and it provides penalties for that.

Now, the Legislature of the Province of Ontario

has power and authority to legislate with respect to anything that transpires within the province, but when you get into the field of trade and commerce -- which includes trade not only in national products -- then you have the Dominion having jurisdiction over that, if it is inter-provincial, or if it is international.

That is subject to certain exceptions, too. I think there have been some recent comments on Section 121 of the B.N.A. -- the British-North America Act, which lays down the proposition that certain of the national products can go from one province to another, those of a certain kind, character and classification.

Otherwise, that is the difficulty. What I am really putting forward in connection with that, Mr. Downer, is this; that if, under the Act, you were to confine your attempts at discipline to a prosecution in the courts, my proposition is, it would not stand up. The courts could not convict for that particular offence, but, as far as that is concerned, the Commission can, where they can properly come to the conclusion that what has been done is of a kind and character which indicates it is not in the public interest, for a person to be registered then they can take the registration away. But they have to have reasonable ground for that. I do not think you

could use it as a back door, and say, "Well, the court did not convict, so we will take it away."

BY MR. DONNER:

Q They have a similar regulation in most of the states which will not permit them to solicit by telephone?

A I do not think they have, as a matter of fact.

BY THE CHAIRMAN:

Q I do not think they have, in the S.E.C.

A No, they have not, in the S.E.C. There is no prohibition against it in the S.E.C.

I cannot say specifically, but my memory is that in most of these into which I have had occasion to look, Michigan and Ohio, I do not think have that prohibition.

BY MR. DONNER:

Q If they are not breaking any regulation over there, what are they objecting so much about?

A They are objecting mainly on account of having reached the conclusion that the fellow who uses the telephone is a high-pressured fellow, and is fraud-

ulently selling, and they put the proposition, not so much that he is selling some security which is not qualified, but that the way he is doing it is fraudulent.

BY MR. JOLLIFFE:

Q Do they not make their complaints on two grounds, one, that he is soliciting without registration, and, secondly, the solicitation actively takes a form which they regard frequently as fraudulent?

A That is right. I do not think they will stress the first one. Their view on extradition now, seems to indicate that.

Q I do not think they could consider the first one very well, because in their own country there is solicitation across state lines, into states where registration has not been obtained, and they do not do very much about it.

A The United States is a large country. The S.E.C. has a publication which comes out once a month at least. It may come out more often now. But in that publication is recounted the cases of convictions and prosecutions, and so on.

There is a good deal of fraud going on there all the time, and those infractions as between one

jurisdiction and another over there, and there seems to be prosecutions by the S.E.C. or prosecutions by different state securities commissions, and they are recorded all in one report each month.

Q My point is, though -- and I have some ground for saying this, and I am interested to know whether it is borne out by your experience -- if the issuer is registered with the S.E.C., and registered also possibly in Michigan and Ohio, we will say, and some of his literature reaches people in Pennsylvania, I do not think they bother much about the fact that it happens to have gone into Pennsylvania?

A No. I understand they do not.

BY MR. JANES:

Q Does it not come back to my point, that we are not in a position to criticize how they are handling their operators over there? We are the ones who want the investment money, and we must comply with their request.

THE WITNESS: Yes, that is right.

BY THE CHAIRMAN:

Q On the other hand, telephoning in itself is

not an offence in the United States, and if a salesman telephoned from Toronto with respect to some security which was properly registered in the United States, there would be no offence at all, as long as he did not make any fraudulent statement in connection with it?

A That is right.

Q So there may be a huge volume of telephone calls across the border which would be counter to no laws, whatsoever.

MR. JANES: Would be legitimate?

THE CHAIRMAN: Yes, which would be legitimate.

BY THE CHAIRMAN:

Q And unless you have some evidence of transactions or deals in securities not registered in the United States, and in connection with which there are some fraudulent statements made on the telephone, the fact that there is a large volume of telephone business going on, does not necessarily imply that it is illegitimate business, in any sense.

MR. JANES: It may come down to the situation that they find they cannot rectify this situation in any other way, and the Commission will have to put

through a ruling that in order to hold a license, they do no telephoning whatever.

THE CHAIRMAN: On the other hand, telephoning in certain circumstances is perfectly legitimate and we do not know whether the man is telephoning in connection with a deal that is perfectly legitimate business, unless we get evidence to the contrary.

MR. JANES: I agree that it will be very drastic, but it may have to come to that.

MR. DOLNER: If fraudulent statementa are made over the telephone, there should be no objection to extradition.

THE WITNESS: No, if you can prove it.

THE CHAIRMAN: A fraudulent statement?

MR. DOLNER: Yes.

THE WITNESS: They have to come back and rely on the Code, as far as that is concerned, with respect to extradition. It has nothing to do with our Act, at all.

BY MR. DOWNER:

Q But we should think about making some recommendation to Ottawa.

A They have been working on this matter for quite some time. I think they pretty well have their minds made up about what they are going to do. They made certain amendments last year. They seem to be going along that line.

Q They might broaden the basis for extradition, in other words?

A Yes.

BY MR. GRUMMETT:

Q Mr. McTague, do you not think the chief objection from the United States is that they realize that the men who are doing 90% or 95% of the telephoning are those whom the Ontario Securities Commission have knocked off, and they become promoters, and have "fronts"--

A Oh, no. The promoters do not telephone.

Q That is the attitude in the United States?

A Promoters do not telephone.

Q They have other people doing it, and the Americans fear the activities of these promoters, and

the Americans fear the activities of these promoters, and that is the reason for their insistence on an extradition treaty.

A I would doubt if there would be five people on the street who answer that description, but they are very potent.

BY MR. DOWNER:

Q Could we not get rid of those five people on the street, who are causing all the trouble.

A Well, Mr. Downer, you will find from the record of the Securities Commission under men who were my predecessors, who arranged to take steps to have certain people deported. There are a couple of them, if my memory serves me right, here on the street now, and they are fairly important people. They took steps to have them deported.

In one case an order for deportation was made by the Immigration Department, but it came back to the courts by way of appeal in one or two cases, where deportation was asked for by the Immigration Department, and the order was not made. Perhaps they were right. Perhaps they should not have been deported.

But there were efforts made by people before my time, and the results are on the record. Deportation was sought by the Securities Commission -- at the instance of the Securities Commission -- on, I would say, several occasions. By that I do not mean perhaps more than five, but I do not think any of them were ever successful.

You get into quite a technical situation when you have somebody who, in your opinion, may be undesirable, but you have to make out --

BY MR. DOWNER:

Q You have to prove it?

A Yes.

BY MR. JOLLIFFE:

Q There would have to be grounds for deportation?

A Yes. It looked to me in some of the cases, as if the grounds, from the files, appeared to be fairly reasonable to me. But they were not, as a matter of fact.

BY MR. DOWNER:

Q I think a great effort has been made to

clear up the situation, and I was wondering if some other way could not be found to straighten out that small minority who were causing the trouble.

BY MR. HOUCK:

Q I play quite a bit of golf, and I hold membership in two clubs, where the memberships are made up 95% of people from Buffalo and Western New York, and there is not a day in the locker rooms, where you do not hear stocks discussed.

A man says, "I bought such-and-such a stock from a dealer in Toronto, and I think it is good", and the fellow takes the telephone number and says, "I will call him to-morrow", and he calls him, and then he tells a friend, and the friend starts calling.

So I think they are just as much to blame as we are.

BY MR. JOLLIFFE:

Q May I ask you this question, Mr. McTague? If an issue is duly qualified in the United States, -- in New York State, we will say -- and if a broker in Buffalo sends me a letter, as a resident of Ontario,

offering that stock; do you think that comes within the definition of "trade or trading" in Section 1 of our Act?

A Wait a minute now until I catch your first proposition. It is that you have a security or issue which has been qualified by the S.E.C.? Is that right?

Q Yes, which can be legally offered for sale in Buffalo.

A Yes, but then --

Q Then he sends me, a resident of Ontario, literature offering me shares.

A The man in Buffalo?

Q Yes.

A I believe it would come within the definition all right, but I do not think we would have any jurisdiction over it.

Q Suppose he telephones me; do you think that would constitute "trade or trading"?

A I do not think so. A telephone call would have to originate in Ontario, and, according to my theory, if you wanted to prosecute him successfully, it would have to be made in Ontario.

I realize the Section says, "within or without Ontario".

Q No. I am not thinking of whether or not we have remedy and whether or not a man can be prosecuted, but what is the distinction?

A "Trade or trading includes any solicitation for or obtaining any subscription to --"

--Oh, I see. I did not realize what you were getting at. That is the old question which has had the S.E.C. and the Ontario Securities Commission "buffaloed" for years, whether it is sold in the United States, or in Ontario. That is the difficulty which exists in connection with your operations all the time. You have to prove, to give us jurisdiction, that the sale was made over here, and to give them jurisdiction for extradition, you would have to show that it was made over there. That is a very difficult thing to do, too.

Q I do not think our definition is quite the same as theirs. Ours is, "Any solicitation for, or obtaining of a subscription".

A Yes. Well, of course, that would only apply, as far as we are concerned, to the people over whom we have jurisdiction. It would not apply to some securities dealer in Buffalo. You are talking about an American securities dealer in Buffalo?

Q Yes. I wonder if that is a complete answer,

the fact that he may happen to be beyond the reach of our courts? Is that a complete answer to the question as to whether it constitutes "trading" within the meaning of our Act.

A I would think it does, but I think it would be only theoretical, as far as anything you could do to him over here.

Q And the theory of the thing may be vital; is it your view that the instance I have cited is not "trading" within the meaning of our Act?

A I think it might be "trading" within the words of the definition of "trade and trading" in our Act, but outside of that, I do not see anything that would flow from it.

After all, what difference does it make, if it happens by the long arm of coincidence to fall within a statutory definition?

Q Then, supposing after that, the broker is found within Ontario.

A That would not give us any jurisdiction, in my opinion. It does not matter about him being found in Ontario. Was the offence committed within Ontario?

Q Why is the offence not committed within Ontario if the actual meeting of minds occurs in Ontario,

as well as in New York State?

A You are really "begging the question". It depends on where the meeting of the minds was, and what evidence there was of it. Did the cheque go from here to Buffalo, and did the confirmation come from Buffalo here? What is the evidence of the meeting of minds? What is the intention as evidenced by the evidencethat is produced?

BY MR. GRUMMETT:

Q No, I think the meeting of minds would occur where the dealer in Buffalo contacted the man in Ontario. That is where the meeting of the minds would be.

A In Ontario?

Q Yes.

A Then the subsequent transaction or dealing would have nothing to do with your question. The meeting of the minds would take place when the Buffalo dealer reached out to the man in Ontario.

THE CHAIRMAN: No, but the meeting of minds, in the sense that is implied in this question, is the actual meeting of the minds, which clinches the trans-

action?

THE WITNESS: That is right.

BY THE CHAIRMAN:

Q And one mind is in Toronto and the other mind is in Buffalo?

A Yes.

Q Where do they meet?

MR. JANES: In the middle of Lake Ontario.

MR. DONNER: It would be a question of intent.

BY MR. JOLLIFFE:

Q Suppose this literature reaches me in Toronto, and suppose, with the literature before me, I write out a cheque and reply, together with the coupon which was sent to me; when I place that in His Majesty's Post Office in Toronto, has not a subscription been obtained from me in Toronto?

BY THE CHAIRMAN:

Q The question is not where the meeting of minds is; the question is, where is the contract made,

and the contract is the communication of an offer, and the communication of an acceptance. There is no contract until the communication of acceptance reaches the offeror.

A Yes, but that is only executory until the securities are delivered.

BY MR. JOLLIFFE:

Q But if the securities are delivered to me in Toronto, what then?

A I do not know. You are asking me to give a general answer to a number of situations.

You have this coming up all the time. You have to get that with the greatest degree of refinement. I do not care to stake my legal reputation, if I have any, on a matter of that kind.

Q It is pretty specific procedure?

A Yes, but that if precisely the sort of question that makes it difficult for the S.E.C., and makes it very difficult for the Ontario Securities Commission, or any other Commission.

BY MR. JANES:

Q In other words, it is "putting you on a

spot".

A That is what you have to make up your mind on, if you want to sue. If you feel you are entitled to recover for fraud, and that it is a proper case, where will you sue? Will you sue in Ontario, or will you sue over there?

I do not want to go out on a limb in connection with that. I think it makes no difference at all.

BY THE CHAIRMAN:

Q I think there would be a difference, depending on who made the first offer, who was the offeror, and who was the acceptor. There must be some rule or international comity of nations, or whatever it is called, to decide on where the contract is made.

But if the offeror is the man who was offering the stock, then the purchaser accepts the offer. On the other hand, the purchaser might conceivably be the offeror; he might offer to buy some stock?

A That is right.

Q And the question is, where is the contract made?

A And there may be a complication there by way of

a comfirmation which is not replied to along certain lines.

Q I think it would differ, according to the circumstances in each case.

MR. JANES: If a man made money on the deal, he would be perfectly satisfied.

THE CHAIRMAN: Oh, yes, if money was made on the deal, there would be no legal problem involved.

MR. DOWNER:: No objection.

MR. GRUMMETT: That does not always happen.

THE CHAIRMAN: Or even as long as there was hope for making money.

BY MR. JOLLIFFE:

Q I understand it to be your suggestion that possibly some of the things which our Act now attempts to do may be ultra vires? I may have misunderstood you.

A No. I did not say "ultra vires". There is a difference between whether an enactment or whether the provisions of a statute apply in a particular case or not. It may be perfectly intra virew, but at the

same time, it might not apply in connection with the situation which occurs outside the province. That has been held more than once. There are several cases on that.

That does not make a statute ultra vires; it certainly is intra virew in any trade, according to its description, as far as the province of Ontario is concerned. It does not purport to go outside.

Q There is one section which refers to telephone calls within Ontario to any resident within or without Ontario?

A Yes.

Q Is that where the Statute comes bang up against the boundary lines?

A Yes.

THE CHAIRMAN: There again is the limitation to that section; telephone calls are allowable in certain instances.

MR. JOLLIFFE: Oh, yes, that is right.

THE CHAIRMAN: Which does not happen with telephone calls across the border.

BY MR. JOLLIFFE:

Q No, for the purposes of this discussion --

A That went down to the words "without Ontario" in 1945, so I am told. It was put in there in the house -- into the Statute. I believe there was somebody --

Q Yes, I remember that.

A Yes.

Q Of course, I would not refer to a case which was decided yesterday, but in the Lymburn and Malen case, there was an outright attack on the Alberta Act?

A Yes.

Q And it failed?

A Yes.

Q On every point of attack.

A Yes, but it was always in the province. The Privy Council held in that case, as you know, that it was quite within the right of a province to pass laws and have penalties of that kind within the province.

Q I read the judgment this morning, and I do not recall the emphasis being put on the words "within the province"?

A Was there not another issue there?

Q My other question relates to the so-called

majority of the brokers and broker-dealers; is it not a fact, Mr. McTague, that a great many broker-dealers are engaging in primary distribution of securities without soliciting in the United States, or in other jurisdictions?

A Well, I would not know, Mr. Jolliffe, about a great number. There are undoubtedly some who do engage in primary distribution who do not solicit. It is certainly more true with the I.D.A.

You see advertisement after advertisement in which the words appear, "This is not a solicitation in the United States", and they have no offering, and they do not do it. That is quite correct.

I would think that firms of that kind are probably very old and well-established firms. They created a business and a clientele locally, and probably in Ontario. I think there would be a certain amount of it. I would not say there would be a great deal of it.

There are houses and people who belong to the Broker-Dealers' Association who are not engaged in primary distributions at all.

But then, of course, when you are getting your

primary distributions through the facilities of the Stock Exchange, you may get American money, but you do not solicit it. Somebody might have some figures on that, that I do not know anything about. I do not know how many houses there would be in that position, but my guess would be there would be very few.

Q You mean very few broker-dealers?

A Yes, very few broker-dealers.

Q But it would be generally true of the investment dealers, would it not?

A Generally, yes. There are some issues where the syndicate is composed of dealers on both sides of the line, but not very many.

For instance, you may have observed the Bell Telephone did not offer its rights to shareholders in the United States, because they would have had to qualify and go through all that, in making an offer from here.

So what happened was that the A. Ames and Company under-wrote that section of the rights, and sold them.

Q Do you think that amounts to discrimination between the shareholders who happened to reside here,

and those who happened to reside in the United States.

A Not in the main, because I think the largest shareholder in the United States, the A. T. & T., was quite content to have the discrimination exercised.

MR. JOLLIFFE: I do not think I have any further questions.

THE CHAIRMAN: Thank you very much, Mr. McTague.

I think perhaps we should not start with Mr. Wismer until after luncheon.

MR. JOLLIFFE: Yes.

MR. McTAGUE: May I ask a favour of the Committee in respect to that? I think I might be able to get Mr. Wismer's evidence out, if I am prepared to examine him -- not cross-examine him. It is only with the idea of being brief, in bringing it out. He has a stack of records.

THE CHAIRMAN: I think that is quite in order. We have taken the position that witnesses should not be represented by counsel, but, on the other hand, you have been a witness, and as we did with the Bell

Telephone Company -- Mr. Munnoch, who was counsel, sat alongside of a witness from the company, and he had been sworn as a witness himself, and had given evidence, and he broke in here and there, and assisted the witness in bringing out the evidence. I think the same thing could apply here. I think it would be very helpful.

THE WITNESS: Thank you, very much.

---Whereupon the witness retired.

THE CHAIRMAN: We shall adjourn now until two-thirty.

---Whereupon at 12.35 of the clock p.m., the further proceedings of this Committee adjourned until this afternoon, at 2.30 o'clock.

- - - - - - - -

AFTERNOON SESSION

Toronto, Ontario,
Tuesday,
August 28, 1951,
at 2.30 o'clock p. m.

- - -

The further proceedings of this Committee reconvened pursuant to adjournment.

All parties present.

Same appearances as heretofore noted.

- - -

THE CHAIRMAN: Mr. Wismer.

W. M. WISMER, a witness being called and duly sworn, testifies as follows:

BY THE CHAIRMAN:

Q Mr. Wismer, I think that, following Mr. McTague's suggestion, it may be convenient for the Committee, if you have some representation to make, that it might be made, perhaps, with some guidance from Mr. McTague. Proceed in your own way.

First of all, for the record, I think it should be stated that you are the manager of the Broker-Dealers Association of Ontario.

A Secretary..

Q Manager and secretary?

A Secretary.

Q Merely secretary?

A Yes

Q Secretary of the Broker-Dealers Association?

A Yes.

BY MR. McTAGUE:

Q Am I right in this, that your official title is Executive Secretary and General Counsel?

A Yes.

Q How long have you been in that position?

A Since March 8th, 1948.

Q When did the Broker-Dealer Association first begin to function?

A The Brokers-Dealers Act came into force on February 19th, 1948. The Securities Act, 1947, came into force on March 9, 1948.

The first meeting of the board was held on February 25, 1948. They actually started functioning when I went to work there as Secretary on March 8th.

Q And what had you been employed at before coming to the Brokers-Dealers Association?

A I was a solicitor with the Ontario Securities Commission.

Q And, before that?

A Before that I was in the Royal Canadian Naval Volunteer Reserve.

Q You were there, I believe, for a couple of years? Is that right?

A Yes.

Q I see you have some notes and I suppose objection would not be taken were you to refer to them. Would you go along and pick out what you consider the more important activities and work of the Association in chronological order?

A Yes.

Q I mean, I may interrupt you---and I imagine members of this Committee will want to ask questions ---but, if you take it up in that form it will be convenient.

A First of all, I would like to mention that the work of the Association covers a period of three and one-half years. During that time the Board of Governors held 146 Board meetings and approximately 300 Committee meetings.

Q Did they receive any remuneration?

A No remuneration whatsoever, except out-of-pocket expenses.

BY MR. JANES:

Q How are they appointed?

A The first Board of Governors was appointed by the Lieutenant-Governor in Council. They were re-elected by acclamation in February 1949. The regulations of the Association provide for an election each year.

One of the first matters the Board of Governors was concerned about was the sale in the United States of securities from Ontario. As a result the first Chairman of the Board of Governors paid a visit to the Chairman of the Ontario Securities Commission, at that time Mr. McTague, and asked him about the problem. Mr. McTague, just prior to that time had written a decision in the Canadian Securities case. This decision is dated March 1st, 1948. I would like to read the appropriate part, in order to get Mr. McTague's exact wording.

> "Under the Ontario Securities Act registration is granted brokers and dealers for the primary purpose of trading in securities in Ontario. It may be that sales may be made in Ontario in a legitimate way to residents of

the United States. However, registration surely cannot be obtained in Ontario practically entirely for the purpose of selling securities in the United States not qualified there and by methods contrary to the laws of that country and the various states of that country. We do not deem it to be in the public interest that we should license brokers and dealers for the purpose of permitting them to violate the security laws of another country on a wholesale basis."

So the Chairman of the Board, of course, delivered that information back to the rest of the members of the Board and that was a matter of guidance for us from then on.

BY MR. JAMES:

Q How many members have you in that organization?

A We have 164 now.

MR. McTAGUE: How many governors?

BY MR. JANES:

Q And how many governors? How many are not members of the Association, that is, dealers?

A I do not quite get what you mean.

Q How many governors have you and how many broker-dealers are not members of your Association?

A We have nine governors in the Association, three of them representing members of the Toronto Stock Exchange. Five of them represent people who are not members of the Toronto Stock Exchange and one of them represents the salesman group. At the present time I am not exactly sure how many broker-dealers there are who are not members of the Association, but I would say in the neighborhood of 12 or 15.

Q They are not represented in your organization at all?

A Broker-dealers who are not members of the Association are not represented.

MR. JOLLIFFE: Mr. Lennox told us that he thought there was only one.

THE CHAIRMAN: One broker-dealer who is not a member of the Association.

MR. JOLLIFFE: Yes; and he said that that was just an inadvertence.

THE WITNESS: There are some members of the Toronto Stock Exchange who are registered as brokers and who also carry on with registration as a broker-dealer.

THE CHAIRMAN: Yes; but I think Mr. Janes' question was how many broker-dealers are not members of the Association, that is, of your Association?

MR. JANES: That is the question.

THE CHAIRMAN: Broker-dealers would include members of the Stock Exchange if they were also registered as broker-dealers.

THE WITNESS: If I could see a copy of the April bulletin for the Commission of 1951, I could answer that question. (referring to document)

There are nine.

BY MR. McTAGUE:

Q May I try to clear that up for the Committee. Are those nine all Stock Exchange houses?

A No. There is one of them who is not a Stock Exchange house.

Q But, the remainder of them are Stock Exchange houses?

A Yes.

Q And then, of the members of the Toronto Stock Exchange some 28 houses belong to your organization? Is that correct?

A 28 member houses and four affiliates.

Q Then, would you not agree that Mr. Lennox' reference was to one broker-dealer?

A Yes

Q Who is not in, and that was by inadvertance as he explained?

A Yes. That is the reason that I pointed out that these others were members of the Exchange.

MR. JOLLIFFE: I think he mentioned that, too.

THE WITNESS: I might mention that the reason for that is that these members of the Toronto Stock Exchange do not engage in primary distribution to the public.

MR. JOLLIFFE: I think Mr. Lennox' explanation was that they wished to hold a broker-dealer's license just in case they ever became involved, or

might be considered to be involved in primary distribution.

BY THE CHAIRMAN:

Q Then, of all those broker-dealers who do engage in primary distribution there is only one who is not a member of your Association? That would be the effect of this?

A I am not sure that he does engage in primary distribution. He may.

Q He may not, even?

A Yes.

BY MR. JANIS:

Q Do you have any regulatory control of the members of your Association?

A Yes. We have a considerable control under our regulations.

Q If a man was dealing illegally, or in an undesirable way, for instance -- and we have been listening to evidence about the telephone sales business--

BY MR. McTAGUE:

Q Perhaps it would be well for you to go over your regulations with respect to, particularly, ethical

conduct. Right now might be a good time.

First of all, tell me who passes the regulations?

A The regulations are made by the Board of Governors, they are approved by the Ontario Securities Commission, they are filed with the Ontario Registrar of Regulations and at that time they become effective.

BY MR. JANES:

Q Are they approved by your organization as a group or just by the Governors?

A Just by the Governors.

BY MR. DONNER:

Q Each member would get a copy of the regulations, nevertheless?

A Yes. The Board of Governors has very broad powers to govern the Association through the definition of "unethical conduct."

MR. JOLLIFFE: I suppose you have copies of those regulations. I do not think they have been filed.

MR. McTAGUE: Yes.

BY MR. McTague:

Q Give the highlights with respect to the definition "unethical conduct"? What power do you have?

A The Board of Governors has power to fine any member or associate member guilty of unethical conduct after a hearing. The definition of "unethical conduct" is very broad. It reads, in the interpretation regulation, namely, regulation, No. 1, as follows:

> "(f) 'unethical conduct' shall mean any act, advertising, conduct, manner of doing business or negotiation which is not in the public interest or in the interest of the Association and shall include,-
>
> "(i) any violation of the securities laws of Ontario,
>
> "(ii) any offence committed under the Criminal Code (Canada),
>
> "(iii) any representation, written or oral, made with the intention of effecting a trade in a security, which is false, fraudulent or

misleading,

"(iv) any unconscionable consideration which is paid or given in respect of a trade in a security.

"(v) any unconscionable profit which is made by any person or company in respect of the purchase and sale of a security.

"(vi) indistriminate solicitation of orders for the purchase or sale of securities either by telephone, telegraph or otherwise,

"(vii) misleading or attempting to mislead the Board or any committee, auditor, investigator or person appointed by the Board in respect of any material matter,

"(viii) failure to keep proper books of account and records in accordance with the requirements of the Commission, the

Board or the association auditor,

"(ix) conduct of such a nature as to bring the securities business into disrepute, and

"(x) any act, advertising, conduct, manner of doing business or negotiation directly or indirectly in furtherance of any of the foregoing."

Q What provisions are there as to penalties, or sanctions the Board may impose on someone who has been found guilty of "unethical conduct"?

A After a hearing the Board of Governors may find a member guilty of unethical conduct or a violation of these regulations and censure him, impose a fine not in excess of $1,000. on a member, or not in excess of $500. on an associate member.

Q The associate member being a salesman?

Yes; or suspend the member or associate member from the Association, or expel him from the Association.

BY MR. JANES:

A Has anybody ever been fined or expelled?

A Yes.

BY MR. McTAGUE:

Q You might as well deal with that now.

A In 1948, which, of course, was a period of ten months with a considerable period of organization in the Association, 13 cases of disciplinary matters were dealt with and six members were fined $650.00.

Q That is the total number fined was six?

A Yes.

Q The total amount of fines on the six?

A Yes; members and associate members. Four members and associate members were suspended and one expelled.

In 1949 there were 34 disciplinary cases dealt with by the Board. 20 members and associate members were fined a total of $4,205.00. There were no suspensions. There were five expulsions.

In 1950 there were 43 cases dealt with by the Board. 25 members and associate members were fined $3,105.00. Five were suspended. Four were expelled. In 1951 there were 27 cases dealt with.

Q That is, to date, to July 1st?

A Up to date. Seven members and associate members have been fined for a total of $705.00. Six have been suspended. Eleven have been expelled.

That makes a total for the three and one-half year life of the Association of 117 cases dealt with, approximately; 58 members and associate members fined for a total of $8,665.00; 15 suspended; 21 expelled.

I might mention in connection with the expulsions that, with one exception, these were as a result of investigations conducted by the Ontario Securities Commission because our Association does not employ investigators.

BY MR. HOUCK:

Q Are the decisions of the Board final or has a member any right to appeal?

A He has a right to appeal to the Securities Commission. I should say, he has a right to have a review by the Securities Commission and he can appeal to a Justice of the Supreme Court, in appeal.

THE CHAIRMAN: Of course he would have that right irrespective of their regulations, with respect to his license. That is, if the Securities Commission decided he has not committed an offence, sufficient to warrant the cancellation of his license, they would allow him to keep it. They

have that power. So, he is not entirely in the hands of the Board of Governors of the Broker-Dealers Association.

MR. GRUMMETT: That is, the Commission does not have to accept the decision of the Board of Governors at all.

THE CHAIRMAN: No, not with respect to his license. The Broker-Dealers Association might decide they did not want him as a member, but the Securities Commission could allow him to retain his license whether or not he is a member.

BY MR. DONNER:

Q How many appeals from the decision?

BY MR. JANES:

Q What became of those people?

A Do you mean, Mr. Donner, from suspensions? and expulsions?

BY MR. DONNER:

Q Yes.

A There have been a considerable number of reviews by the full Commission, if that is what you mean by "an appeal."

Q Yes. It is the same thing.

A Of course, the Broker-Dealers Association and the Ontario Securities Commission take action at approximately the same time.

Q How many members have you altogether?

A We have 164 members, 282 associate members.

Q These cases are either with respect to members or associate members?

A Yes.

Q In other words, one-third of your membership has been in some sort of difficulty at some time or another?

A Yes. A little less than one-third; 164 and 282 against 117.

MR. McTAGUE: Of course, it is like the law of diminishing returns---it is always changing.

MR. DONNER: Getting smaller, we hope.

BY MR. JANES:

Q Did any of those continue in business, that is, any of those expelled parties?

A No. The Ontario Securities Commission and the Broker-Dealers Association have always gotten along very well on that matter.

BY MR. McTAGUE:

Q I did not mean that. Were any of those expelled re-admitted to the Broker-Dealers Association?

MR. VILLENEUVE: Yes.

THE WITNESS: I cannot think of one who was expelled who was re-admitted. Some of those who have been suspended have been re-admitted.

MR. DONNER: That is a different thing.

BY MR. JANES:

Q In each case the Commission cancelled the license?

A Yes.

BY MR. GRUMMETT:

Q You have no assurance that they disappeared completely from the broker-dealer business or the stock trade business?

A No assurance except, of course, that if they are operating in any capacity they are breaking the law---that is, if they are selling stock.

BY MR. VILLENEUVE:

Q Operating without a license?

A Yes.

MR. McTAGUE: There used to be quite a number of prosecutions, as you will recall, when you were at the Commission, on account of people selling or dealing with securities without a license.

Q That is the situation of late years as far as that is concerned? Are there many prosecutions of that kind?

A There have been a considerable number of prosecutions, I believe, by the Ontario Securities Commission for selling without a license.

BY MR. JANES :

Q But, your responsibility is directly to the people who have a license?

A Yes.

Q Of course, I think, primarily, that is our responsibility, too.

MR. DOWNER: Yes.

BY MR. JOLLIFFE:

Q You are concerned with members of your Association?

A Yes; that is right.

Q You have no authority over any others?

A No; we have not.

BY MR. DONNER:

Q But, they are all members, except one, -- all the dealers?

A Yes; all the broker-dealers. Of course, there is the Investment Dealers' Association. They are dealers.

BY MR. HOUCK:

Q When the Ontario Securities Commission receives a complaint about one of your members do they report that complaint to the Board of Governors?

A Sometimes they take it up with the Board of Governors, but we have an understanding with the Ontario Securities Commission that if they are going to suspend, expel or prosecute one of our associate members they will give us an opportunity to say something on his behalf, if there is anything to be said, unless, of course, it is a case where very summary action must be taken.

BY MR. JANES:

Q Would the Investment Dealers' Association have much the same set-up?

A The Investment Dealers' Association is incorporated under a Dominion charter. They are Dominion-wide and have various districts, throughout Canada, but Ontario, I believe, is the central ditrict.

Q They control their actions, the same as your organization?

A Yes; they do.

BY MR. DONNER:

Q On what do you base your fees for your organization?

A The fees for both members and associate members coming in initially have been increased recently, but up until the last few months they were $150.00 for applicants coming in with their principal place of business in the cities of Toronto, Hamilton, London, Ottawa and Windsor; $75.00 for the smaller cities outside of those five cities; $25.00 for the towns and villages.

The renewal fees annually were the same;

but just recently we have doubled the initial application for membership fee and in the case of the associate members up until recently it was $10.00 a year, with a renewal fee of $10.00 a year. Recently the initial fee has been stepped up to $50.00 and the renewal fee to $25.00.

Q That is, generally?

A Yes.

BY MR. JANES:

Q Do you anticipate losing any members by reason of that fee?

A Definitely not.

BY MR. JOLLIFFE:

Q The question is, is the fee prohibitive?

MR. DONNER: Apparently not.

BY MR. JANES:

Q Do you know anything about the regulatory actions of the Investment Dealers' Association, that is, whether its casualties are as high as yours, or how do they corespond?

A The Investment Dealers' Association has been in business for many years. They have done their housecleaning. We are in the process of doing ours.

Q I understand. That is a good answer.

BY MR. GRUMMETT:

Q. Regarding the fees, if a house has a branch office in another town, would that house pay double the fee as laid down for another city?

A No.

Q. For instance, one in Toronto and one in Windsor?

A No. We have no fees for branch offices but the Ontario Securities Commission has. However, they must make an application to us if they intend to open a branch office and then we approve or disapprove of it.

BY MR. HOUCH:

Q. Outside of your Bord of Governor's meetings, do you at intervals have a meeting of the members as a whole?

A Yes. The regulations call for an annual meeting and in addition we have had two special general meetings of members and we have had one special general meeting of associate members.

BY MR. GRUMMETT:

Q. What members of the Board of Governors constitute the committee to which you referred?

A There are various committees of the Board. In order to assist the Committee here I have a chart which

I can show you which shows the most import committees. In addition, there are other special committees which are appointed from time to time.

BY MR. McTAGUE:

Q. You might read some and have it in the record.

BY MR. JANES:

Q. Are any Broker-Dealers members of the Investment Dealers' Association?

A We have ---

THE CHAIRMAN: I suppose we could file this chart as an exhibit, and it may save having to read all of it.

EXHIBIT NO. 135:- Chart of Organization

THE WITNESS: We have two members of the Toronto Stock Exchange of whom I can think offhand, who are members of all three organizations.

The main committees are the Finance Committee, the Audit Committee, the Membership Committee, the Discipline Committee, the Legislation Committee, the Price Spreads Committee, Members' Literature Committee, the Public Information Committee, the Education

Committee, the Salesmen's Committee and the Quote Committee.

BY MR. MCTAGUE:

Q. Perhaps you could get back to the chronological order, subject to further questions, which may be asked you.

A I would like to mention that there was a considerable time lag in getting the Association in operation because it was necessary to complete the drafting of our regulations and in addition we had to decide upon our membership and associate membership forms of application, our membership and associate membership certificates and to get started on the preparation of financial statements for members. In addition, we had some little difficulty getting office space. We did not get that until about the end of March.

I mention these things to show that it took a little while to get the association going and start organization.

If the members of the committee are interested I have forms of application here for membership of members and associate members.

EXHIBIT NO. 136:- Application for membership form in the B.D.A.

EXHIBIT NO. 137:- Application for associate membership form in the B.D.A.

You will notice that these forms are very similar to the ones used by the Ontario Securities Commission for registration as a broker-dealer and for registration as a salesman.

The first matter that the Board of Governors dealt with was applications for membership. It was decided to leave the applications for associate membership over until a later date.

Under Section 38 of the Ontario Securities Act, it was necessary for the Board to appoint an Association auditor who was an auditor who had practised in Ontario for a period of ten years. As a result, on May 5th --

Q Will you run over what his duties are? They are substantially contained in the Secutities Act, itself?

(PAGE 3164 FOLLOWS)

A Yes. Some of them are contained in the Securities Act, but there is a reference there as well to our regulations.

Q Just tell the Committee what his job is.

A His job is to send out the financial statement forms to the panel auditors. Each member of the Association has an auditor of his own who has been named to a panel by the Board of Governors. Once a year we have a permanent annual audit, which is as of November 30. Then there is a surprise audit in the intervening period. These financial statements come in from the panel auditors to the Association auditor who examines them and reports back to the Board of Governors on whether or not each member of the Association is in a satisfactory financial position. If he is not then the Board of Governors can proceed to take action against him. All of those cases are dealt with by number. The Board of Governors never knows which member they are dealing with; they only know the facts concerning the case. From time to time the Association's auditor may be directed by the Board of Governors to go out and examine the financial affairs of a member. They sometimes get information that a member may be in financial difficulties due to the way he is conducting

his business. The Association's auditor will go out, make an examination and report back to the Board. Those are, generally, the duties he carries on.

Q Has the Board of Governors, as a result of audit, otherwise, had to take action against any of the members?

A Yes. There have been quite a few suspensions.

Q For what? What is the requirement which these people violate?

A We have certain capital requirements which have been laid down. If a member of the Association is financing one mine he must have $1,000 liquid capital; if he is carrying on a general brokerage business and he is incorporated he must have $5,000 liquid capital, unincorporated $2,000.

I might mention here that when a member is coming into the Association we require him to have $5,000 liquid capital but then he may go out and engage in sponsoring an issue and after he has sent out some literature the Board of Governors consider that $1,000 liquid capital is sufficient if he is only sponsoring one mining issue.

Q Are there anyexpulsions at all?

A There is one case which I remember very vividly, of a broker-dealer in Port Hopse, Ontario.

It came to the attention of the Association's auditor that he was bordering on insolvency. The case was reported to the Board. They did not like some features of it, so they immediately turned the matter over to the Ontario Securities Commission for investigation.

As a result, the Commission found that he had been stealing clients' funds.

He was convicted and sent to the penitentiary.

BY THE CHAIRMAN:

Q What do you mean exactly by "liquid capital" in the sense you use it?

A By "liquid capital" I mean actual cash in the bank, that is, securities he has put up which are marginable under the existing margin requirments of the Toronto Stock Exchange, or government bonds.

Q Would that be over and above all liabilities?

A Yes.

BY MR. McTAGUE:

Q You mean working capital? That is, capital in a liquid condition?

BY MR. JANES:

Q The auditor probably finding that they were not in a secure position financially, by auditing found also that which would come under unethical cases?

A Yes; very often.

BY THE CHAIRMAN:

Q This liquid capital would have to be maintained at those stated amounts so long as he carried on business?

A Yes.

Q That is, they would have to maintain that much liquid capital during the course of their business? That is the practise?

A Yes. I might mention the fact that the Ontario Securities Commission is conducting what they call "snap audits" from time to time in order to make sure that they do retain that amount of capital in their business.

BY MR. McTAGUE:

Q I take it your members are subject to the audit requirements in the Association and, at the same time, are subject to order by the Commission

and both processes are going on all the time? Is that right?

A Yes.

BY MR. JANES:

Q How often does your Association do an audit---at any time you take a fancy?

A We have an annual date as of November 20 when all members are audited and also a surprise audit in the intervening period.

BY MR. McTAGUE:

Q A surprise audit, without warning?

A Yes.

Q Yes. Go ahead with your evidence.

A Another problem which concerned the Board of Governors in the early stages of the Association was the sale by some security dealers of securities that were at a price far in excess of the current over-the-counter market price or without having an over-the-counter market at all; so, as a result, a committee of the Board was appointed and they approached Mr. McTague, who was then Chairman of the Commission, and he advised the Association that the Ontario Secur-

ities Commission did not require a broker-dealer to run a market on a stock which he was distributing to the public. About the middle--

Q You were using the term "security dealer." That has a technical meaning. I wonder if you would make it clear to the Committee, what you meant. The securities dealers and the broke-dealers are not the same under the Ontario Securities Act.

A The reason I used the term "security dealer" was so that it would be applicable over the entire brokerage field, not just applicable to the Broker-Dealers Association.

About the middle of May, in 1948, the Board commenced dealing with applications for associate membership, but at that time they had not yet exercised their prerogative under the regulations to make associate membership in the Association compulsory. That came later.

I mentioned to you about the permanent annual audit. There is another point. The members of the Association who are also members of the Toronto Stock Exchange have their auditing done by the Stock Exchange auditor, but we require a certification from the Exchange auditor once a year

that they have met the exchange audit requirements.

BY MR. JANES:

Q To go back to something you said a minute ago, about the associate members, you said something about their membership being compulsory?

A Yes.

Q Just what does that mean? Does that mean it is compulsory--

A The Board of Governors later on in 1948 made it compulsory for them to be associate members if their employers were members, with the exception of members of the Toronto Stock Exchange. Their salesmen and customers' men do not have to be associate members.

Q I understand.

BY MR. McTAGUE:

Q What comes next?

A The Board of Governors found that the members and associate members of the organization had a very poor knowledge of the provisions of the Ontario Securities Act; consequently, they instructed me to deal with sections of the Act piece by piece and set them out in a bulletin which we send out

to the members and associate members. We found that if they could read those sections one at a time with, perhaps, a small anotation at the bottom, it was not very long before they knew what the law was. We did find it helped them a lot. For a short period we discontinued it and we found out they were asking for it.

Q You conduct a bit of continuous education on that basis right along?

A Yes. Actually, in the bulletins as they go out now, even though we have covered it before we still put in sections of the Act for them to read.

BY MR. JANES:

Q. Probably this is not a fair question, but how many members of your Association would you know of dealing in telephone selling? It is probably not a fair question.

A I would say that every member of the Association uses the telephone for selling who is emgaged in primary distribution.

MR. McTAGUE: You mean an illegitimate business in the United States?

MR. JANES: Yes.

MR. DOWNER: You mean the fringe operators?

THE CHAIRMAN: Not necessarily fringe operators, because, as it is pointed out, there are circumstances under which telephone operations to the people in the United States might be perfectly legitimate, in which might be involved dealing with registered securities in the United States. The telephone conversation might be quite within the confines of the Act.

MR. DOWNER: Yes.

THE CHAIRMAN: So that I suppose what you have in mind is how many are selling by telephone to the United States securities which are not registered in the United States?

MR. JANES: Yes. I am trying to get at how many of the membership would be causing difficulties. If a member were dealing lawfully in a legitimate way he would not be causing difficulties.

THE WITNESS: I would say that there are about 35 who have had difficulties with the United States authorities.

BY MR. DOWNER:

Q. Is it not possible to weed out those 35?

THE CHAIRMAN: On the other hand, you spoke about difficulties with the United States authorities,

can you elaborate on that a bit? There may be different kinds of difficulty, some more serious than others.

THE WITNESS: Postal fraud orders from the United States, and fictitious orders. Those are the two.

BY MR. McTAGUE:

Q. I think you have sufficient experience and you have had enough contact with all your members to be able to give some idea to the Committee of what you mean by those things. What do they indicate, how are they obtained and so on?

A The fraud order and the fictitious order are issued by the Postmaster-General of the United States. They are publicized in a Post Office bulletin which is sent out to all the postmasters in the United States.

Q Can that not be done by the postmaster, his agent, ex parte --- that is, without hearings --- in the case of non-residents of the United States?

A Yes.

Q It is a unilateral act on the part of representations which may be made and so a fraud order is made there without a hearing as far as the person to whom it is aimed is concerned if he is not a resident of the United States?

A Yes; that is right.

Q What is the fictitious order? Tell us about that.

A The fictitious order was a peculiar thing. The Postmaster-General of the United States started issuing this against broker-dealers who were not carrying on business in their own names and were not incorporated. We had one member of the Association who had only been in business for a period of two months. I understood that he sent very little literature into the United States, but, about seven or eight months later, a fictitious order was issued against him. Actually it has the same effect, as far as the mail is concerned --- stoppage of mail --- as a fraud order.

Q You mean a fictitious order is an order which is issued in the case of a person who is not using his own name? He may have purchased somebody else's business?

A Yes.

Q And he may be continuing under the old name? Is that right?

A Yes.

Q If he does that, and the original person has disappeared, a fictitious order may be issued? Is that correct?

A Yes; but, they only issue those fictitious orders for a very short period of time. They were

issued against about 12 members of the Association and they they were stopped. They have not been resumed recently. That, I believe, was in November, 1949.

THE CHAIRMAN: A fictitious order would not indicate at all any fraudulent act or any irregular dealing.

MR. McTAGUE: If I may be permitted to explain, Mr. Chairman, it is perfectly legal and perfectly proper for somebody who is in a law firm to carry the name of a deceased member of a firm in Ontario. It is illegal in Quebec; you have to change it.

THE CHAIRMAN: The same with the broker and anyone else. Take the case of a man who buys a hardware store. He can carry on under the name of the one from whom he buys. That is done all the time.

BY MR. GRUMLETT:

Q. Suppose a man carries on business as a broker-dealer, he dies, then according to the regulations his sone cannot carry on the business under the previous name?

MR. McTAGUE: He would be subject to a fictitious order.

BY MR. JANES:

Q. With respect to all these men against whom

fictitious orders were issued, were they all carrying on with a trade name in that way or were they using a trade name some place to cover up their actions?

A No; they were not using a trade name, necessarily to cover up their actions.

In one case two partners had bought out the business of another man and wanted to continue in that name. They had a fictitious order issued against them. The effect of it was that when anyone in the United States endeavoured to send them by mail it was stamped "Fictitious. This mail returned by order of the Postmaster-General." This mail was then immediately returned by order of the Postmaster-General of the United States. In the case of a fraud order it is stamped "Fraudulent. This mail returned by order of the Postmaster-General of the United States."

BY MR. McTAGUE:

Q. Fraud order, fictitious order.

A That is all; just the two.

Q What about these orders called fraud orders --- cease and desist orders and so on?

A The cease and desist orders as a rule are state matters. When a broker-dealer sends mail into a given state without having complied with their law the securities administrator may send him a letter advising

him to cease and desist from violating securities laws of that state.

In the case of New York State they do not use the cease and desist procedure. They use a temporary injunction which is followed by a permanent injunction.

BY THE CHAIRMAN:

Q. That is an order which would have to be made by a judge of the court, I suppose?

A In some states, Mr. Chairman, it is made by a judge, but in most of them it is merely an administrative act by the securities administrator.

BY MR. McTAGUE:

Q. Oh; but, the injunction order is usually made by a judge? That is the New York practise?

A Yes.

Q What about the Pennsylvania practise? Do you remember that, particularly?

A I cannot recall it, offhand.

Q That is, the procedure by indictment in absentia. It is their substitute or equivalent of cease and desist orders of some of the other states.

BY THE CHAIRMAN:

Q. With respect to these fraud order of which you make mention, many of these broker-dealers you

mention are subject to fraud orders. Give us the total figure. You say some were fictitious orders and some were fraud orders. Have you that figure as to how many were affected by fraud orders?

A Offhand, Mr. Chairman, I would say that there would be about twenty or twenty-three who would have fraud orders against them.

Q Do you know the basis for a fraud order in the United States? These, of course, are orders made by the Security Exchange Commission.

A Yes, always.

MR. McTAGUE: Now.

BY THE CHAIRMAN:

Q. Well, -- or, by the postal authorities?

A Or, by the postal authorities.

Q Ex parte, without, necessarily any hearing at all? Certainly without any opportunity for the broker to put in any statement or any defence?

A Yes.

BY MR. JOLLIFFE:

Q. Is that right?

A When I was in Washington, in June, 1950, I asked Mr. Milton Krohl, the assistant general counsel of the Securities and Exchange Commission, what the procedure was leading up to a fraud order and he said that in most cases

the Securities and Exchange Commission gathered together the material, which was placed before a Grand Jury. The Grand Jury indicted, the indictment was secret and the information was then passed on to the Postmaster-General who proceeded to issue a fraud order, if he saw fit.

BY THE CHAIRMAN:

Q. Do you know what they have in mind when they speak of "fraud" in connection with those orders? Does that cover offences which may have very little, if anything, to do with a fraudulent misrepresentation in the ordinary sense? How wide is that expression?

A I would prefer to leave that to Mr. McTague but I understand that in the United States Post Office Act there is a definition of "fraud" and in the Securities Act there is a definition of "fraud."

Q I suppose the definition which would apply in this case would be the Post Office definition?

MR. McTAGUE: No. that is the trouble. The Post Office Act is a very old Act. Its definition of fraud is very much as we understand "fraud" as far as that goes. The Securities Act introduces a number of things which are called "fraud" and which we do not understand as fraud at all.

BY THE CHAIRMAN:

Q. With respect to some of those fraud orders made by the postal authorities, do they cover some alleged fraud as defined by the Securities Commission?

BY MR. McTAGUE:

Q. Tell the Committee of one case which was ---

THE CHAIRMAN: I think we should hear exactly to what this amounts.

THE WITNESS: There was a member of our Association who had a fraud order issued against him from the United States. He was promoting an oil company in the Province of Alberta.

As I understood it the properties were actually held in trust for the company but a statement was made that the company itself, did not own any oil properties in Alberta at all and, of course, that was followed in the United States by some publicity.

Subsequently a fraud order was issued against him. He proceeded to fight it in the United States courts and subsequently it was revoked.

Another case of a member in the Association; we had a newspaper man come into the office who wanted to get some information on the Association.

He told us that a newscaster had deliberately

sent a return coupon in to a member of the Association so that the member or a salesman would call him on the telephone. They proceeded to record or take the conversation down in shorthand. A night or two later on the newscast this broker-dealer was taken to task and subsequently a fraud order was issued against him by the Postmaster-General.

He had been in the securities business for a period of 17 years and had never previously had anything against him.

BY MR. JOLLIFFE:

Q. Is there not another procedure apart from the procedure of indictment? A number of the United States postal orders seem to have been made on the basis of findings by examiners.

MR. McTAGUE: They always are in the case of citizens of the United States --- always.

BY MR. JOLLIFFE:

Q. I am referring to some cases I have seen and on which the order is based on the findings of an examiner and some of them are quite lengthy and detailed.

A Very often when a fraud order has been issued -- and we have found this out --- the tendency is that the members of the Association will endeavour to use a

different designation; instead of saying "Joseph Doakes and Company, Limited," they will put on "Joseph Doakes" on a return envelope to go in with their literature. A fraud order will come out then against "Joseph Doakes." That maybe on the finding of the examiner.

Q I am not referring to that procedure, at all. I have seen a number of these, and as a matter of fact, Mr. Lennox quoted one of them to us here on Wednesday. He quoted one, referring to an Alberta oil development, which involved a finding by a post office examiner and within that finding there was a quotation from a statement by an Alberta public official.

MR. McTAGUE: I know that one. That has nothing to do with the United States. That is an Ottawa matter. Blackstock, in Alberta, made the statement in connection with the S.E.C. and the file was passed along with this statement. I saw the file in Ottawa.

MR. JOLLIFFE: It was actually taken in the United States, first. There was action taken in the first instance in the United States. I think Mr. Lennos said that, too.

MR. Mc TAGUE: I do not know that. I had to do with all that matter down in Ottawa. I remember that statement very well. There was somebody who had sent

out literature to the effect that a certain property was located, I think he put it, within a certain distance of the Red Water area, or something of that kind; whereas, as a matter of fact, it was in Lloydminster. They are fairly close to one another, as far as that goes.

An inquiry was made from the United States to the Chairman of the Public Utilities Commission in Alberta and he stated what he believed to be the facts and also the opinion that it was mis-representation and so on. I remember that case very, very well. I saw it in Ottawa.

MR. JOLLIFFE: It was mentioned here on Thursday, I think by Mr. Lennox, as an example of reliance on a statement by a public official which he thought went a little beyond the scope of the duty of a public official.

MR. McTAGUE: I agree with him.

MR. JOLLIFFE: But, be that as it may, the point is that particular statements are to be found, as I understand it, within a report of a decision by an examiner in the United States upon which the United States Postmaster-General issued a fraud order. The only reason I am raising the question is that I suggest that is another procedure which is sometimes used in addition to the secret indictment the witness has mentioned.

THE WITNESS: Yes. That is possible.

Q But, you are not familiar with the details?

A I am not familiar with it.

BY THE CHAIRMAN:

Q The point I was trying to get at was this; we have heard a good deal about the fraud orders. It seems to me, from what I have heard in the evidence, that some of these fraud orders---perhaps many of them---may be based upon some alleged offence which is much more trivial than others but in some cases it may be very far removed from anything which one might normally regard as fraud in the ordinary sense but that it is some technical offence which is defined as fraud under the United States statute.

Am I right, or am I not right in that ?

A We do not know; and, we cannot find out.

Q So that the publication of notices of these fraud orders does not indicate in any way the ground on which they are made?

A No.

MR. McTAGUE: Put it this way, that people get confused here when they think of a fraud order or a cease and desist order, that an order of that kind is something in the nature of conviction after one has been tried. It is not. It has no relation-

ship to that at all. It is something which somebody thinks should be done to initiate a procedure on the assumption he may be guilty but he has never been tried. People get that impression.

THE CHAIRMAN: I think also they get the impression that a fraud order must imply an offence of quite serious nature.

MR. McTAGUE: That is right.

THE CHAIRMAN: And, not some technical omission to fulfill some statutory requirement of more or less a formal nature.

THE WITNESS: I can say that when I was in Washington in 1950 it was mentioned to me by the assistant general counsel that they had turned over to the Canadian postal authorities cases against some of our members. You will recall that there were twelve broker-dealers and some 70 others connected with companies the Broker-Dealers were sponsoring, and who at that time had their mail stopped. It is just possible that the Canadian Post Office authorities were acting on information which had been turned over to them by the Post Office Department, but subsequently all of

those mail bans were lifted.

THE CHAIRMAN: So that, if this mail ban was based upon some offence of great seriousness, of great gravity, and there was justification for putting on the ban one would think there would not be much justification for lifting the ban.

MR. JOLLIFFE: Except for the loud noise which would be raised.

BY MR. JANES:

Q Would you say that those broker-dealers were ignorant of that United States' regulation, or law, or that they know they were breaking the law when they sent those securities and that information out?

A Oh, I think that they know they are breaking the laws of the United States, also the laws of the other provinces of the Dominion of Canada.

Q That is the point to which I was coming. You gave us the list of the casualties you had last year in your organization. When you find all that proof of "illegal conduct"--- are those the right words--there must be a great many of them who are breaking the laws of the United States and

I can see no excuse for that, because they are breaking the laws of a foreign country, a country which has no come-back and therefore no right to ask that those laws be changed.

A In the first place, under our definition of "unethical conduct", it only mentions a violation of the Securities laws of Ontario. We are set up under a Public Act of the Legislature of the Province of Ontario.

I have a story to tell you later, about what the Broker-Dealers Association earnestly tried to do in order to comply with the United States law and be put on the same basis as Americans, and how it all turned out. We have done everything in our power to try and work out something.

MR. GRUMMETT: Following up what Mr. Janes said a moment ago, do you think that we can seriously quarrel with the right of the United States to issue these fraud orders, the cease and desist orders, if these people are breaking the laws of the United States? We cannot quarrel with it. That is the point Mr. Janes was raising a moment ago.

THE CHAIRMAN: I do not think it is a question of quarrelling with their right to do what

they did. The only thing I wanted to get a clear picture of was to what these fraud orders amounted, what they covered, what they meant. "Fraud," sounds like pretty nasty language, whereas selling a perfectly good security, without making any misrepresentation, in a perfectly regular way, with the exception that one might not have complied with some registration provision, which may be an illegal act, on the other hand, is a long way from making a fraudulent misrepresentation or something which we generally regard as "fraud". Two entirely different things.

MR. JOLLIFFE: The difficulty is there is no evidence before us on that point. There is no evidence before us to indicate whether the offences, in respect of which these orders were issued, were what Mr. McEntire calls "plain, unvarnished fraud," or whether they are technical cases. We do not know.

MR. McTAGUE: You have not any evidence before you to the contrary. If you want to take Mr. McEntire's proposition with respect to "plain, unvarnished fraud," and insist on the definition,

that is one thing, but it is not evidence of the kind or character whichis usually taken as valid anywhere.

MR. JOLLIFFE: That is precisely what I said. I said that there is no evidence before us whether the offences, in respect of which the orders were made, were "plain, unvarnish fraud," as Mr. McEntire called it, or purely technical offences.

MR. McTAGUE: That is right.

MR. JOLLIFFE: We do not know whether it is one, in one case, and the other, in another case. I would suggest that is also a valid objection with respect to Canadian Post Office orders. You do not know on what basis they are made, whether they are made with respect to security dealers or somebody who is alleged to have beem peddling sweepstake tickets; and there is no trial.

MR. McTAGUE: In the future there is going to be. That was settled down there at that time with the United States authorities. They were under the impression that they were exercising

the same powers as the United States authorities until it was demonstrated to them that the United States did not do that with their own citizens and therefore they changed the Act.

MR. JOLLIFFE: My information is that the United States authorities did do it against their own citizens.

MR. McTAGUE: In this case. The Act has been amended.

MR. JOLLIFFE: The Post Office Act?

MR. McTAGUE: Yes.

MR. JOLLIFFE: In what year?

MR. McTAGUE: This year.

MR. JOLLIFFE: This year?

MR. McTAGUE: Yes; this year; to provide for hearings in case the Postmaster thought there was a case. Then you have a hearing. No more ex parte orders.

MR. JOLLIFFE: That is, whether it is a securities case or any other case?

MR. McTAGUE: Securities cases.

MR. JOLLIFFE: You say it is limited to the securities cases.

MR. McTAGUE: That part of it is. And the other case is where you have lotteries and things like that, where it speaks for itself.

MR. JOLLIFFE: Perhaps it speaks for itself; and the Americans seem to think that some of the literature from up here thinks for itself.

The point I was making is that as a result of that affair last year the Securities dealers have now certain protection. They are going to get a hearing, but not the fellow who sends out letters. He will not get a hearing.

MR. McTAGUE: Anybody who has to do with securities there.

THE CHAIRMAN: But not with lottery tickets.

MR. McTAGUE: But not with lottery tickets.

MR. JOLLIFFE: That is precisely what I said in the first place.

THE CHAIRMAN: The selling of securities is not a lottery.

The whole picture seems to me to be that, although there have been certain fraud orders, so-called, issued in the United States, against certain Toronto broker-dealers, we do not know on what evidence they were based.

We do know that the broker was never given any right of a hearing before the order was made. We know that the definition of "fraud" in the Securities and Exchange Commission covers many types of offence which are not usually associated with draud in its ordinary sense but really we do not know how serious the whole thing may be, whether it is a matter of grave concern or whether it is something more of a technical and perhaps trivial nature. Is that right?

MR. DOWNER: That is right.

MR. GRUMMETT: You made the statement that the broker-dealers were not given an opportunity to present their case. Do you know how many of them would want to do that?

THE CHAIRMAN: I said the order was made without them being there or without them being given any opportunity to be there.

MR. GRUMMETT: But how many would take advantage of the opportunity to go across the border?

MR. JOLLIFFE: The Americans would have a stronger case if they extended notice and an opportunity to appear to the accused.

THE CHAIRMAN: Yes; and, some information about

what the offence was.

BY MR. JANES:

Q. You suggested that you felt these men were now breaking the United States laws where they did this?

A There is no doubt about that.

Q Then they are offenders and troublemakers. They know the United States law and I can see no excuse for it at all. That is my stand.

MR. VILLENEUVE: They asked for it.

MR. McTAGUE: That is pretty broad. You come from around the border. There was smuggling and exportation of liquor going on which was something which was not looked upon with such great seriousness in regard to breaking the law.

MR. JANES: They went to jail over it.

MR. McTAGUE: No; they did not go to jail.

THE CHAIRMAN: We will now have a short recess.

---Whereupon a short recess was had.

---Upon resuming.

BY MR. McTAGUE:

Q. Would you get along with your historical narrative? What is the next subject?

A I would like to mention that the last week of

June, 1948, Mr. Lennox was appointed Chairman of the Commission and Mr. Marriott was appointed Vice-chairman. At this time the Board of Governors had some difficulty in receiving applications which were difficult to refuse. The Board hesitated to approve them. They did not want to refuse them. Consequently we worked out with the Ontario Securities Commission a system of sponsorship for salesmen in this category. This is summed up in the decision of the full Commission, dated October 19, 1948, in the case of John A. Sherman and Samuel Boltman. Their applications for registrations were sponsored by members of the Broker-Dealers Association and their respective employers, who appreciate that they are placing their own registration in jeopardy by assuming this responsibility.

> " We consider sponsorship by a prospective employer essential to the success of an application launched under these conditions. It indicates progress in marked contrast to the usual type of submission made so often in the course of the recent review of registrations that a broker could not be responsible nor reasonably be held responsible for the conduct of his salesmen. An applicant who can not obtain this necessary support may no doubt

plead a material change of circumstances, within the meaning and intent of Section 27."

Then, I drop down:

" However, we consider that these salesmen be given one chance at least of proving to the Commission they can heed a warning and can take advantage of working under proper conditions. They are both comparatively new to the work and from the outset were introduced to the wrong type of sales methods. Both have the capacity to be successful salesmen, without resorting to objectionable methods."

BY MR. McTAGUE:

Q. These were salesmen who had formerly lost their registration?

A Yes. Only one out of approximately fifteen of these salesmen who have come in under sponsorship has let us down and there the case was so doubtful that he, again, was given his registration under the strong sponsorship of a member of the Association. So, that has worked out extremely well in these cases.

Until the middle of July, 1948, there had been a committee of unlisted traders on the street

who had supervised the inclusion in the list of unlisted mines and oil which goes in the daily press, various securities. Application was made to them and they accepted them for that list or rejected them.

With the formation of the Broker-Dealers Association most of these committee men were members and associate members of our organization so they gladly consented to come in as a committee of the Board of Governors, called the "Quote Committee". At the present time they look after the daily quotations which go into the newspapers under the name of the Broker-Dealers Association. Application is made to them either on this form, or with pages attached to it, giving information on the securities which are wanted to be included on that list.

Another thing they do is they will not permit a security to go on the list unless it has been price-spreaded by the Broker-Dealers Association, if that is required. So, the work of the committee and the work of the Board of Governors fits in.

I do not know whether the Committee would like to see copies of this form, or not.

THE CHAIRMAN: I think we should have it.

EXHIBIT NO. 138: - Form with information for the listing committee.

THE WITNESS: In August, 1948, the Board of Governors exercised its prerogative under the regulation to require all salesmen or members except members of the Toronto Stock Exchange and the Investment Dealers Association, to become associate members.

It is also possible for a security issuer, who is under the jurisdiction of the Ontario Securities Commission, to become a member of the Association, but, at the present time, we have none of those and, consequently, none of their salesmen is in our organization.

BY MR. McTAGUE:

Q. Just what is a "security issuer"?

A A security issuer is a company registered with the Ontario Securities Commission to sell its shares directly to the public and all the proceeds from the sale of the shares go into the treasury of the company.

Q The shares are never sold by broker-dealers? Is that right, or is that not right?

A They can be but they are very rarely over sold by broker-dealers.

MR. JOLLIFFE: Except on commission.

THE CHAIRMAN: Yes; they would be sold on commission. If they were sold through a broker-dealer he would be paid a commission.

THE WITNESS: Yes.

BY MR. JANES:

Q. They only sell their own shares? Is that correct?

A Yes; and they sell through the officers of the company and through salesmen employed by the company, registered with the Commission.

BY THE CHAIRMAN:

Q. When a company applies or gives this information in the form in which you have haned it to us, to the listing committee, before any mining or oil issue shall be included in the unlisted mines quotation in the three Toronto daily papers, is there any regulation of your Association similar to the Toronto Stock Exchange regulations, which provide for the number of shares which have to be in the hands of the public before that can be put on the unlisted quotation, or anything of that kind?

A No; there is not.

Q It is just the information which you require?

A Yes.

Q And a company can be mentioned in that list of unlisted securities in the papers, even in the first instance, before they have gone out and sold any

shares at all --- or, can they?

A The Quote Committee will not include them in the list unless an application has come to the Board of Governors of the Broker-Dealers Association for a price-spread.

Q Yes. Then, the prices will appear in those published lists in the newspapers, must be prices of actual transactions, trades in the stock at those prices. Some of them may be offer prices and bid prices?

A Yes.

Q The stock has to be active to that extent, and it is being offered for sale?

A Yes.

Q And there must be some bids for it, I suppose?

A Yes. In nearly all cases there are bids. There is an occasional one where there is no bid at that particular time.

BY MR. HOUCK:

Q. You refer to the price spread. Who controls that price spread?

A It is controlled by the Board of Governors of the Association.

BY MR. McTAGUE:

Q. This might be an opportune time to go into

that. That is a rather interesting matter.

A To start with price spreads. In April, 1949, the Ontario Securities Commission advised the Association that a member was taking a very excessive mark-up on the shares he was selling to the public in an issue which he was sponsoring. If I remember correctly, the shares were coming down from the treasury of the company at about five cents and in some cases being sold at 55 and 60 cents, to the public, without it being warranted by any exploration or development at the property. So, as a result, the Board of Governors considered the matter and they decided to set up a price-spreads committee.

BY MR. JANES:

Q. Let me ask a question at this point. They were coming down from the treasury at five cents. That is all the company got, the five cents?

A Yes.

THE CHAIRMAN: The broker got the balance.

MR. JANES: Yes.

THE WITNESS: So, the Board of Governors decided to set up a price-spreads committee. They required members of the Association who were engaged in the primary distribution of the issues to the public to submit a letter requesting the price spread on their

issues from the Board. In most cases they named the price at which they wanted to sell the security. The price spreads committee would then meet, sometimes call in the member --- this was initially --- and they would decide whether or not the price spread which the member requested was justified. If they did not feel it was justified they cut him down to what they thought was a reasonable figure, considering the merits of the case.

The Board of Governors did not feel, there being so many varying factors, that they could have a fixed percentage mark-up, but it was not very long before the Board arrived at the conclusion that in the initial primary distribution of an issue, a spread of about two times the take-down price was fair and equitable. That was only a maximum. In some cases, the Board of Governors did not grant that maximum. I remember one case where in a Lloydminster oil proposition the shares were only granted a maximum offering price of 12½ cents and recommended to the member that the issue not be sold and for a period of time it was not sold.

BY MR. McTAGUE:

Q. Why would there be such a recommendation that it not be sold? That I just do not understand.

A Simply because at that particular time there were few Lloydminster issues being floated. The Board of Governors did not feel that the public would get a run for its money on those Lloydminster issues.

Q All right. I am sorry to have interrupted you. Go ahead.

A Initially the Board of Governors only dealt with first offering price; they did not go on to increases, but they received a letter from the Chairman of the Ontario Securities Commission in which he said he felt that after the initial maximum offering price was established some of the increases the members were taking were not justified; so, as a result, the price-spreads committee covered the field of increases, as well. If a member of the Association in primary distribution wants to increase his offering price he must make application, submit four copies of the prospectus as filed with the Ontario Securities Commission and also he must send in a letter from the company signed by the secretary and one director showing the number of shares taken down, the price paid, and giving a brief summary of what has been accomplished with the funds which have been put in the treasury.

For a period of time the spreads were, as I mentioned, about twice the take-down price; but then

we had a conference with the Chairman of the Commission, on his suggestion, and they were scaled down on a sliding scale after 25-cent stock to the treasury was reached. In other words, where 25 cents was being paid into the treasury the maximum allowed was 75 cents. After that, where 30 cents was being paid into the treasury, the maximum allowed was 85 cents, and so on, until when you got up to a dollar being paid into the treasury, the maximum allowed was two dollars.

I might mention that the majority of the members of the Association do not take advantage of the maximum given by the Board. They usually keep their offerings under that.

BY MR. GRUMMETT:

Q. That is, the Board of Governors' maximum allowed?

A Yes. I might say that maybe they have a little axe to grind there in view of the fact that if they start offering stock at, we will say, 20 cents a share, they like to be able to step the offering price up to 25 cents a share. That may be the reason they do not take advantage of the maximum.

BY MR. McTAGUE:

Q. I wonder how they could take advantage of

the maximum. With respect to the few in which there was a certain step-up, it was set as a maximum, but all those cases were heard by the committee. Am I wrong in that, that is, the committee set the market?

A They are not heard by the committee in the sense that the member is called in.

Q No. How are they dealt with?

A The letter comes in from the member requesting a price spread on the issue, together with four copies of the prospectus filed with the Securities Commission. If it is an increase he submits a letter from the company, which letter I have mentioned, then the price-spreads committee studies the material and on the basis of the disclosure in the prospectus sets the maximum offering price.

Q To what extent is that price-spreads committee of yours -- the Broker-Dealers Association -- acting in respect to the activities of other people on the street who are engaged in primary distribution along the same line? I am referring to the Stock Exchange, the I.D.A. and so on.

A The Toronto Stock Exchange has issued a directive to all of its members to come to the Board of Governors of the Broker-Dealers Association for price-spreads in view of the fact that there are three representatives

of the Toronto Stock Exchange on the Board.

Q That means whether those members of the Stock Exchange are members of the Broker-Dealers Association or not?

A Yes; that is right.

BY THE CHAIRMAN:

Q. The President of the Broker-Dealers Association is also a member of the Toronto Stock Exchange -- is he not?

A Yes.

Q Mr. Rogers?

A Yes. We have the occasional member of the I.D.A. who is not a member of our Association who comes to us for a price spread.

BY MR. McTAGUE:

Q. How was this problem of price-spreads handled before the institution of this system between the Securities Commission and the Broker-Dealers Association? How was it handled prior to that time?

A Prior to the Association being set up it was not handled at all except on the basis of unconscionable profits under the Securities Act. When I was a solicitor there I remember one striking case very well, a case of stock being taken down at ten cents and being sold at

ninety cents.

BY MR. JOLLIFFE:

Q. Was anything done in that case?

A If I remember the situation correctly, the dealer involved subsequently had his registration cancelled.

Q On some other ground?

A I am not sure. I do not recollect the facts of that, Mr. Jolliffe.

BY MR. McTAGUE:

Q. Not likely. I mean that that would be a ground if that were known.

Is there anything else you wish to say about price-spreads?

A No, except that it seems to be working out very well.

It was a little difficult, at first, to get our members educated to the idea of having themselves regulated by the Association on price spreads, but they are accepting it now. Mr. Lennox recently has requested that the Board of Governors consider cutting down the price spreads even further and there is going to be discussion on that some time in September or October.

BY THE CHAIRMAN:

Q. You say it is working out, you think, to

the benefit of your members. You would also say that it is working out to the benefit of the public as well?

A Yes; I would.

Q Once the stock becomes listed in the newspaper ---not on the Stock Exchange---under the listed column, then you have the offering price and the bid price---and selling in the course of primary distribution is going on---but if that newspaper price falls below the price the broker-dealer has to get in order to clear himself in distributing the issue, that pretty well interferes with the whole operation?

A Yes.

Q And then what happens is that in order to maintain the required price on the listing? Sometimes the broker-dealer has to buy back stock at that price in order to maintain it?

A Yes.

Q That happens often?

A Yes; very often.

Q That is one of the hazards of the business?

A If he is supporting the market on the stock.

Q And if that price increase is in the newspaper

listings and is offered at higher prices than the original price--if there are bids of higher prices than the original price, any purchaser of the stock has an opportunity of selling out at a profit?

A Yes.

Q I suppose there are a lot of them who do not take that profit? They are hoping for a bigger profit.

BY MR. JANES:

Q Mr. Lennox spoke of the middlemen in those cases. Where does he come in on a transaction of that kind?

A The middleman is usually the promoter, and sometimes an unregistered underwriter or optionee. Very often a member of our Association will act as agent for him in the primary distribution of the issue to the public.

BY THE CHAIRMAN:

Q With respect to the price spread of which you make mention; is that not a spread between the option price from the company and the price at which the broker-dealer sells it to the public?

A Yes.

Q So that, if there is a middleman, that would not make any difference?

A No.

Q The profit would have to be divided between him and the broker-dealer?

A Yes; but the Ontario Securities Commission now will only allow the middleman a maximum profit of one-half cent.

MR. JANES: Yes.

BY MR. JOLLIFFE:

Q But, when you use the term "price spreads" in your Association, you are referring to the difference between the price to the treasury and the price paid by the public to the broker-dealer?

A Yes.

THE CHAIRMAN: That is what I understood.

MR. McTAGUE: Where the broker-dealer is acting as principal.

MR. JANES: The middleman would get a

piece of the profit.

THE CHAIRMAN: What difference does it make what profit the middlemam gets as long as the total spread of the price is fixed?

MR. JANES: Apparently Mr. Lennox thought it made a difference.

THE WITNESS: We do not take that into consideration at all. We are only interested in the maximum offering price to the public and the money which is going into the treasury and if a member of the Association wants to go beyond our selling price we say to him: "Fine. Take it, but take down your next option and put the money in the treasury, so you can get ahead with your exploration and development of the property."

There is another matter which comes into play there. I was talking with a member of the Association a while back who had three deals accepted for filing by the Securities and Exchange Commission. I said to him: "Are you proceeding with the sale of those deals in the United States?" He said: "No." I said: "Why not?" He said: "They will only allow me a mark-up of 25%", and

he said "In order to print my literature, which I must send down to new people so they can send back coupons and I can call them on the telephone, and the cost of paying commissions, I cannot financially do it. Consequently, after getting my three issues accepted for filing down there, I have not been able to proceed."

BY THE CHAIRMAN:

Q I thought the Securities and Exchange Commission was not concerned with mark-ups? I think that is what Mr. McEntire said in his letter, if I recall it. We have that information from some sources.

MR. JOLLIFFE: I think that is what he said and I think Mr. Lennox made the same point in connection with Can-Ed prospectus.

THE CHAIRMAN: The Securities and Exchange Act was merely a disclosure statute and the public could see for themselves what amount was going to the treasury and they could pay anything they liked; yet you say that in some cases the S. E. C. has limited the spread.

THE WITNESS: I am speaking of my conversation with a member of the Association. I have not looked into the law on the subject.

THE CHAIRMAN: It would be interesting to know. It may not be under the S. E. C. Act but it may be a condition which they have imposed arbitrarily.

MR. GRUMMETT: Or it may have beem a case of one of the States imposing regulations.

THE CHAIRMAN: Yes. There may be some explanation.

THE WITNESS: However, that is aside from the point.

BY MR. McTAGUE:

Q What is your next subject in chronological order?

A Another problem which confronted the Board of Governors was what is called "switching."

Up until this time there had been a considerable amount of raiding of each other's deals by members of the Association. I understand that is done in two ways: One member might distribute

an issue to the public. Another member of the Association would get a list of his shareholders. He would proceed to solicit them with literature and call them on the telephone and endeavour to switch them out of the issue that they had into his issue. Another way it was done was by the transfer of salesmen. Salesmen would work for one member and sell his deal, then he would transfer to another member, take the names and addresses of those people he had sold before with him and they would be contacted by literature and on the telephone, and they would proceed to switch them into the other deal.

This happened sometimes three or four times with a member of the public who was gullible enough for that sort of thing.

As a result the Board of Governors has issued a directive to the members of the Association. They said:

> " It has come to the attention of the Board of Governors that wide-spread switching has developed in both listed and unlisted stock of companies whose treasuries are in the process of being financed. The Board has studied this matter thoroughly and has resolved to put a stop to such practices. The Board must point

out to all members and associate members of the Association that it is not in their interest, in their clients' interest or in the interest of the companies which they are sponsoring, to conduct their business in this manner."

We had a couple of disciplinary cases on that and after that it pretty well dried up. Periodically the Board of Governors hears rumours of small outbreaks of it, but it is very well under control now. Of course, it is difficult to prove because you cannot get the person to come in before the Board, that is, the person who has been switched.

BY MR. GRUMMETT:

Q. A salesman who switches from one house to another must have his registration changed or corrected?

A Yes. He has it transferred with the Commission or with the Association.

BY MR. JANES:

Q. You told us that a salesman in order to be an associate member must be a salesman for a member of your Association?

A Yes.

Q. He can, as well, change during the year to another member of the Association?

A Yes.

MR. McTAGUE: With the approval of the Association and the Commission.

BY MR. JANES:

Q. With the approval of the Association and the Commission?

A Yes.

One of the big jobs which the Board of Governors had in its first year was in getting out the financial statements, that is, the forms of financial statements, the instructions and the questionnaires for panel auditors and members of the Association to answer, and also in arriving at the capital requirements.

If the members of the Committee would like to look them over I have copies of the financial statements here. There is also a sheet with the financial requirements on it.

EXHIBIT NO. 139:- Memorandum of special statement of affairs with forms attached.

BY MR. DOWNER:

Q. Were you breaking new ground or was this Broker-Dealers Association similar to one set up in another jurisdiction?

A We were breaking new ground. There is a National Association of Security Dealers in the United States and we could learn a great deal from the methods of the Toronto Stock Exchange and the I.D.A. But we had to break new ground for our particular problems.

Q I take it that this Association was actually the brain child of Mr. McTague?

A Yes.

MR. DOWNER: Is that right, Mr. McTague?

MR. McTAGUE: No, I do not think so.

MR. DOWNER: I want to give you credit, that is all.

MR. McTAGUE: As a matter of fact, Mr. Downer, this principle of compulsory audit or surprise audit and that sort of thing, where the Association took charge, as far as this country is concerned, had its origin with the Toronto Stock Exchange after the famous depression hit in which there were a number of people who went out of business. The public and the clients suffered substantially. That was one of the things which was brought in and it was brought in, my recollection is, largely on the recommendation of Mr. Clarkson. It originated in that way here at that time. The I.D.A. require it and the Broker-Dealers Association follow. So, it is original with them, but it is not

an original idea.

MR. DONNER: Whether you originated it or not I think it is one of the finest things that has ever been done for the business.

MR. JANES: It certainly looks that way to me.

THE WITNESS: I might mention that the Board of Governors had endeavoured to get the services of top-notch auditing men. The present Association auditor is the president of the Institute of Chartered Accountants -- Mr. John A. Wilson. The members of the Committee probably know him.

Coming now to the perusal of members' literature. I might say that has been a most onerous job. It started in the Fall of 1948.

The Board, first of all, received a letter of complaint from the Ontario Securities Commission regarding high pressure literature which had been used by one of the members of our Association. Subsequently, to further complaints received against members, it was placed, therefore, in the hands of the chairman of the discipline committee.

He came back to the Board and said thst in his opinion, the type of literature which was being used by some members at that time was like the old-time

patent medicine literature. He recommended to the Board that we immediately undertake the perusal of all members' literature. I think you can comprehend what an enormous job that is, when you consider that we have the literature of about 125 members to peruse. Some of them, of course, do not put out a great deal.

With respect to the mechanics of the perusal, we require three typewritten or proof copies to be submitted. They are perused by Mr. Gemmell, the assistant secretary who is a lawyer, or myself. All the members must be prepared to leave the literature overnight, or over the week-end, as the case may be, because we have to have an opportunity to sit down in peace and quiet and study it. Any changes or deletions are made in red pencil on all three copies. After the perusal is made it is stamped "Perused". We recently changed the stamp, as was mentioned here yesterday, to show the initials of the perusing officer.

One copy is returned to the member, one copy goes daily to the Ontario Securities Commission and one copy is retained in the members' literature file at the Association.

We cannot actually approve the literature because it is impossible for Mr. Gemmell and myself to pass on drill hole results, or ore reserves, or other technical

matters, but, however, we do our best to cut out the high pressure-language, the mis-statements of fact, violations of the Securities Act and the law and the Association regulations, and we, in some cases, require them to submit colour proofs so that we have an opportunity of cutting down on the flambuoyancy of the literature.

There was one member who came in the other day who wanted to put out what they call a "lead" covered with an orange background, with a blue overprint with white borders and with a great arrow over the side. Of course, I immediately rejected it. We do not have a rejection stamp. We just write "Rejected" on the literature and return one copy to him and file the rest in our files.

BY THE CHAIRMAN:

Q. Was it the orange to which you objected, or was it the blue to which you objected?

MR. McTAGUE: I, myself, was wondering about that.

MR. GRUMMETT: Do they not go together?

THE CHAIRMAN: I think they do.

MR. JOLLIFFE: Pretty hot stuff.

THE WITNESS: We found as a matter of experience that if the literature is very flambuoyant in color an awful lot of complaints go into various securities commissions on it. Consequently, we endeavour to tone it down as much as possible.

At the request of the Ontario Securities Commission we require all of our members to date their literature, the month, the day and the year.

Another dodge which they try is that they put out occasional bulletins on a grass roots proposition, referring to a company which was starting to engage in primary distribution. Somewhere in the literature, at the back, they put a mining picture showing underground workings with nothing on it -- just a picture. Of course, the reason that was done was because some gullible people might think that that was the workings of this particular property. As a result, we now require them to state where the picture is taken, whether it is Hollinger or Lake Shore and what the underground working is.

MR. JOLLIFFE: You do not appreciate power symbolism.

THE WITNESS: Do not appreciate what?

MR. JOLLIFFE: Power symbolism.

THE CHAIRMAN: We heard about that in the Legislature. His namesake. Symbolism in art.

THE WITNESS: Another thing we found was that they take an engineer's report and the particular part of the engineer's report that they wished to stress was built up into capital letters or solidly underlined in red. Recently that has been stopped.

That was also done with quotations taken out of newspapers. We insist that the quotation must be just as it appeared in the engineer's report or in the newspaper.

In the matter of finely printed literature we require them to submit two copies. One of those copies is filed in the member's file at the Association and one is sent to the Ontario Securities Commission so they can observe from time to time how the member is progressing with his literature.

It is also checked on by the perusing officers. That pretty well covers the literature situation from the mechanics point of view.

BY MR. JOLLIFFE:

Q. I wonder, since we will probably be adjourning soon, if you would allow me to clarify this amendment to the Post Office Act?

THE CHAIRMAN: Yes.

MR. JOLLIFFE: Which I now have.

I think both Mr. McTague and myself were slightly off the beam. There was a little misapprehension and I had better read it exactly as it is. Apparently it is a re-enactment. This act may be cited as the Post Office Act.

Section 7, under the heading "Use of mails for unlawful purposes":

"(1) Whenever the Postmaster General believes on reasonable grounds that any person

(a) is, by means of the mails,

(i) committing or attempting to commit an offence, or

(ii) aiding, counselling or procuring any person to commit an offence, or

(b) with intent to com it an offence, is using the mails for the purpose of accomplishing his object,

the postmaster General may make an interim order, (in this section called an 'interim prohibitory order') prohibiting the delivery of all mail directed to that person (in this section called the 'person affected') or deposited by that person in a post office.

"(2) Within five days after the making of an

interim prohibitory order the Postmaster General shall send to the person affected a registered letter at his last known address informing him of the order and the reasons therefor and notifying him that he may within ten days of the date the registered letter was sent, or such longer period as the Postmaster General may specify in the letter, request that the order be inquired into, and upon receipt within the said ten days or longer period of a written request by the person affected that the order be inquired into, the Postmaster General shall refer the matter, together with the material and evidence so considered by him in making the order, to a Board of Review consisting of three persons nominated by the Postmaster General.

"(3) The Board of Review shall inquire into the facts and circumstances surrounding the interim prohibitory order and shall give the person affected a reasonable opportunity of appearing before the Board of Review, making representation to the Board and presenting evidence.

"(4) The Board of Review has all the powers of a commissioner under Part I of the Inquiries Act,

and, in addition to the material and evidence referred to the Board by the Postmaster General, may consider such further evidence, oral or written, as it deems advisable.

"(5) Any mail detained by the Postmaster General pursuant to subsection eight may be delivered to the Board of Review, and, with the consent of the person affected, may be opened and examined by the Board.

"(6) The Board of Review shall, after considering the matter referred to it, submit a report to the Postmaster General, together with all evidence and other material that was before the Board, and upon receipt of the report of the Board, the Postmaster General shall reconsider the interim prohibitory order and he may revoke it or declare it to be a final prohibitory order, as he sees fit.

"(7) The Postmaster General may revoke an interim or final prohibitory order when he is satisfied that the person affected will not use the mails for any of the purposes described in subsection I, and the Postmaster General may require an undertaking to that effect from the person affected before revoking the order.

"(8) Upon the making of an interim or final prohibitory order and until it is revoked by the Postmaster General,

(a) no postal employee shall without permission of the Postmaster General

(i) deliver any mail directed to the person affected, or

(ii) accept any mailable matter offered by the person affected for transmission by post,

(b) The Postmaster General may detain or return to the sender any mail directed to the person affected and anything deposited at a post office by the person affected, and

(c) the Postmaster General may declaire any mail detained pursuant to paragraph

(b) to be undeliverable mail, and any mail so declared, to be undeliverable mail shall be dealt with under the regulations relating thereto.

"(9) Where no request that an interim prohibitory order be inquired into is received by the Postmaster General within the period mentioned in subsjection two, the order shall, at the expiration of the said period, be deemed to be a final

prohibitory order."

It may be some improvement but it is, still, pretty drastic.

MR. McTAGUE: Pardon?

MR. JOLLIFFE: It is still pretty drastic.

MR. McTAGUE: Oh, yes, but not nearly as much as it was. You had people opening mail and various other things.

MR. JOLLIFFE: You see, under the Section, as amended, mail cannot be delivered even where there is involved an interim regulatory order.

MR. McTAGUE: That is a temporary matter, Mr. Jolliffe. The whole Post Office Act is under revision and this was a stop-gap, as far as that was concerned. That was the understanding, and it will be dealt with probably at this session. I do not know whether or not that is so. Among other things it is contemplated that there will be an appeal to the Exchequer Court, as far as that goes.

MR. JOLLIFFE: This is a new Act.

MR. McTAGUE: That I will grant you. I know it is.

MR. JOLLIFFE: Replacing the old Act.

MR. McTAGUE: Oh, no. The old Post Office Act is a very large Act. That would be only replacing a part.

MR. JOLLIFFE: I will tell you what it says:

"Bill No. 322 passed by the House of Commons, 12th June, 1951."

MR. McTAGUE: Yes.

MR. JOLLIFFE: It says:

"This Act may be cited as the Post Office Act."

Section 78 says:

"78. The Post Office Act. The Savings Bank Act and Part 9 of the Excise Tax Act are repealed."

MR. McTAGUE: That may be.

MR. JOLLIFFE: It is a brand new Act.

MR. McTAGUE: We never took any position other than that they should have an opportunity of being able to be heard.

MR. JOLLIFFE: I agree with you entirely. My only point is that under the new provisions the mailing privileges are suspended with the making of an interim order and remain suspended until that is revoked either

by the Minister of his own motion or as a result of review -- and that might be quite a long time.

MR. McTAGUE: It might be. It was, as a matter of fact. Under the procedure they followed under the old Act last year some of them were held under suspension for as long as sixty days, if I remember correctly, without any charge at all.

MR. JOLLIFFE: I had a case in which it was about sixty days.

MR. JANES: What else could they do but handle it in that way?

MR. JOLLIFFE: I do not believe in people being penalized without an opportunity to defend themselves.

MR. McTAGUE: I agree with that.

MR. JOLLIFFE: I do think that is a lawyer's point of view, and I believe it is a common sense rule.

MR. JANES: If he was sending out fraudulent literature or misrepresenting some stock he might have the stock all sold before they could have the hearing.

MR. JOLLIFFE: How do you know he is guilty until it has been gone into and how can it be gone into properly unless you hear both sides of the story?

MR. DONNER: One could take that into many avenues, as far as that goes, not only the Post Office Act.

THE CHAIRMAN: That is right.

MR. McTAGUE: It is very similar to the procedure followed in the United States in the case of residents. It is really borrowed from that.

MR. JOLLIFFE: I think it is.

THE CHAIRMAN: Shall we now adjourn until 10.30 o'clock tomorrow morning?

---- The witness temporarily retired.

---- Whereupon at 4.55 o'clock P.M., the proceedings of this Committee adjourned until Wednesday, August 29th, 1951, at 10.30 o'clock, A.M.